TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1918

No. [illegible]220

ST. LOUIS POSTER ADVERTISING COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, MAYOR; JAMES N. McKELVEY, COMMISSIONER OF PUBLIC BUILDINGS, AND WILLIAM YOUNG, CHIEF OF POLICE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

(26,033)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 566.

ST. LOUIS POSTER ADVERTISING COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, MAYOR; JAMES N. McKELVEY, COMMISSIONER OF PUBLIC BUILDINGS, AND WILLIAM YOUNG, CHIEF OF POLICE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 13, 1917.

1 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Supreme Court of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the April Term, A. D. 1917 thereof, between St. Louis Poster Advertising Company, Appellant, and The City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Appellees, a manifest error hath happened, to the great damage of the said Appellant, as by its complaint appears. We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, D. C., on the 21st day of July, A. D. 1917, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 21st day of June, A. D. 1917.

Issued at office, in the City of Jefferson, Mo., with the seal of the District Court of the United States for the Central Division of the Western District of Missouri dated as aforesaid.

[Seal of the United States District Court of Missouri, Central Division, Western District.]

JOHN B. WARNER,
Clerk of the United States District Court for Central Division, Western District of Missouri,
By H. C. GEISBERG, *Deputy.*

Allowed by

W. W. GRAVES,
Chief Justice Supreme Court of Missouri.

[Endorsed:] #18411. St. Louis Poster Adv. Co., App., P. E., v. City of St. Louis et al., Resps., D. E.
Writ of Error. Filed Jun. 21, 1917. J. D. Allen, Clerk Supreme Court.

2 *Return to Writ.*

In obedience to the Command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled cause, together with all things concerning the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of Missouri, at Jefferson City, Mo., this 27 day of June A. D. 1917.

J. D. ALLEN, *Clerk.*

3 The United States of America to The City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of Missouri, wherein St. Louis Poster Advertising Company is Appellant, and plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Waller W. Graves, Chief Justice of the Supreme Court of Missouri, this 21st day of June, in the year of our Lord One Thousand Nine Hundred and Seventeen.

W. W. GRAVES,
Chief Justice.

3½ UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, ss:

I hereby acknowledge due service of the within Citation, this twenty-second day of June A. D. 1917.

CHARLES H. DAUES,
Attorney for Defendant- in Error.

[Endorsed:] #18441. Supreme Court of Missouri. St. Louis Poster Advertising Company, Appellant, vs. The City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Appellees. Citation. Filed Jun. 25, 1917. J. D. Allen, Clerk Supreme Court.

4 In the Supreme Court of Missouri, en Banc, April Term, 1917.

Be it remembered, that heretofore, to-wit, on the 23rd day of May, 1914, there was filed in the office of the Clerk of the Supreme

Court of Missouri a certified transcript of the record of the Circuit Court of the City of St. Louis in a cause between the St. Louis Poster Advertising Company, Appellant, and City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents, the said transcript containing a copy of the judgment and order granting appeal in said cause, which said judgment and order granting appeal are in words and figures as follows, to-wit:

"And at the said April Term, 1914, of said Court, the following further proceedings were had in said cause, to-wit:

Friday, May 1st, 1914.

90109-A.

ST. LOUIS POSTER ADVERTISING COMPANY

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police.

Now at this day, it appearing to the court that the demurrer filed by the defendants to the plaintiff's petition in the above entitled cause, was by the court sustained on the 27th day of April, 1914, and the plaintiff now here in open court declining to plead further, it is ordered by the court that final judgment be rendered on said demurrer in favor of the defendants; and,

It is, therefore, considered and adjudged by the court that the plaintiff take nothing by its suit in this behalf, but that its bill herein, be, and the same is hereby dismissed, and that the defendant go hence without day and recover of plaintiff the costs of this proceeding, and have therefore execution;

Thereupon, plaintiff files and presents to the Court an affidavit for an appeal and prays an appeal in the above entitled cause, and the court having seen and examined said affidavit, doth order that an appeal be, and is hereby allowed plaintiff to the Supreme Court of the State of Missouri from the judgment or decision of the Court this day rendered herein."

"The said affidavit for appeal is in words and figures as follows, to-wit:

STATE OF MISSOURI,
City of St. Louis, ss:

Affidavit for Appeal.

In the Circuit Court, City of St. Louis, April Term, 1914.

SAINT LOUIS POSTER ADVERTISING COMPANY, a Corporation, Plaintiff,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

STATE OF MISSOURI,
City of St. Louis, ss:

J. H. Brinkmeyer, as President and agent for and in behalf of Saint Louis Poster Advertising Company, the above named plaintiff, being duly sworn, makes oath and says, that the appeal prayed for in the above entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved
6 by the judgment or decision of the Court.

[SEAL.] J. H. BRINKMEYER,
Its President and Agent, for and in Behalf of the Above-named Plaintiff.

Subscribed and sworn to before me this 1st day of May, A. D., 1914.

[SEAL.] CHAS. R. GRAVES, *Clerk.*

STATE OF MISSOURI,
City of St. Louis, ss:

I, Chas. R. Graves, Clerk of the Circuit Court, City of St. Louis, do hereby certify the foregoing to be a true, full and complete transcript of the record and proceedings (as required) in the above entitled cause, as fully as the same remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this 14th day of May, 1914.

[SEAL.] CHAS. R. GRAVES,
Clerk Circuit Court."

7 And thereafter, to-wit on the 5th day of January, 1917, there was filed by Appellant an abstract of the record in said cause, which abstract of record is in words and figures as follows:

Abstract of the Record.

In the Supreme Court of Missouri.

No. 18441.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

This suit was filed on March 21, 1914, in the Circuit Court, City of St. Louis, Missouri, and was returnable to the April Term, 1914, of said court. The suit was brought to enjoin the enforcement of certain ordinances concerning the construction and maintenance of bill-boards, and asks that said ordinances be declared void.

8 The petition is in words and figures as follows:

Petition.

STATE OF MISSOURI,
City of St. Louis, ss:

In the Circuit Court, City of St. Louis, April Term, 1914.

ST. LOUIS POSTER ADVERTISING COMPANY, Plaintiff,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

The plaintiff, St. Louis Poster Advertising Company, brings this, its bill of complaint, against the City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police of the City of St. Louis.

I.

The plaintiff, St. Louis Poster Advertising Company, was incorporated under the laws of the State of Missouri on February 1st, 1894, under the name of "The St. Louis Bill Posting Company," a certified copy of its charter being filed of record in the office of the Recorder of Deeds for the City of St. Louis, in corporation book 12, page 457; its name was subsequently duly changed to "St. Louis Poster

9 Advertising Company," and it now is and at all the times herein mentioned was a corporation organized and existing under the laws of the State of Missouri, with its principal place of

business in the City of St. Louis, Missouri; the defendant, City of St. Louis, is a municipal corporation organized and existing under and by virtue of the Constitution of the State of Missouri; the defendant, Henry W. Kiel, is Mayor of said City of St. Louis; the defendant, James N. McKelvey, is Commissioner of Public Buildings for said City of St. Louis, which said office of Commissioner of Public Buildings for said City of St. Louis is a public office created and existing under and by virtue of the Charter and ordinances of said City of St. Louis; the defendant, William Young, is the duly appointed and acting Chief of Police for said City of St. Louis.

II.

The plaintiff is now and since 1894 has been engaged in the business of bill posting and advertising in the City of St. Louis; it has erected and now maintains a large number of bill-boards and signs upon lots, tracts, parcels of lands and buildings, situated in various parts of the City of St. Louis; at the present time it owns, leases and uses more than seven hundred bill-boards and signs within the City of St. Louis; said bill-boards extend over a total space of approximately fifty thousand linear feet and were erected at a cost of about one hundred thousand dollars, and plaintiff has furthermore invested a large amount of capital in establishing a plant and equipment for carrying on its business, and the same are not adapted to any other business; the total outer face or posting surface of the bill-boards and signs owned and used by plaintiff in said City of St. Louis amounts to approximately five hundred thousand square feet; the vast production of posters and their extensive use in all lines of business advertising has created a need for suitable structures whereon to display the same, and that such structures have become standardized and have reached a high degree of excellence in manufacture, and in practically every city and town in the United States and in all foreign countries there are persons and corporations whose business it is to secure locations for and to erect such structures thereupon and to display thereon for hire posters and poster advertisements, and that such structures are commonly called bill-boards, although the same are usually faced with iron or steel, and are often constructed entirely of iron or steel, thus making a stronger, safer and more durable structure than ever required by any ordinance or pretended ordinance of the City of St. Louis.

III.

Plaintiff further states that the business of manufacturing posters has reached enormous proportions in the United States and foreign countries, and that a vast amount of capital is employed in that industry and large numbers of persons depend upon that business for support; that the size of commercial posters has become uniform and standard, and plaintiff avers that the standard height of such standardized posters require for their display a poster surface not less than 10 feet 6 inches in height and from 9 to 70 feet in length; that the

equipment of the plants engaged in the manufacturing of commercial and theatrical posters is adapted to the production
11 of such standard size, and that no change can be made in such standard size without tremendous initial expense and loss; that such posters can only be prepared advantageously and profitably in large quantities on account of the great initial expense for designs, lithograph stones and plates, etc., and that in order to use such posters advantageously and economically the customers of plaintiff and of others engaged in like business require and direct that such posters used by said customers be posted generally and often simultaneously throughout the cities of the United States and Canada; that all the said bill-boards of plaintiff have been constructed the necessary length and height to give the required outer face or poster surface for the posting thereon of such standardized advertising and thus meet the needs of plaintiff, and plaintiff avers that any limitation whereby it shall be compelled to reconstruct and reduce the present size of its said bill-boards will disastrously affect the business of plaintiff and deprive it unlawfully of its property.

IV.

Plaintiff further states that in all cases the bill-boards of plaintiff have been built upon private ground, property, buildings, wall spaces or vacant lots leased to or owned by plaintiff, and that in no case are the bill-boards of plaintiff, erected upon public property or upon public streets, but only upon private lots adjoining public streets and alleys, and plaintiff avers that no advertisements have been permitted to be displayed upon the bill-boards or signs of plaintiff which have been in any manner vicious or injurious
12 to the morals of the residents of or visitors to the City of St. Louis, and plaintiff avers that it has in the long course of business experience built up a valuable and profitable business which it avers is now and at all times has been conducted in a lawful manner and in compliance with the laws of the State of Missouri, and the valid ordinances of the City of St. Louis.

V.

Plaintiff further states that in the erection and maintenance of its said bill-boards it has always complied with the laws of the State of Missouri and the valid ordinances of the City of St. Louis; that all of its said bill-boards and signs are built and constructed in a substantial, permanent, safe, workmanlike and sanitary manner; that said bill-boards are constructed in strict compliance with the plans and specifications prepared by competent engineers and architects, and that the same are so constructed as to withstand and safely resist a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressure specified by the building ordinances of the said City of St. Louis for the frames of steel skeleton buildings, and corresponds to a velocity of wind of eighty-three miles per hour, which is a greater velocity than any on record in the said City of St.

Louis, and said bill-boards as constructed therefore have as great power of resistance as the standard required for the tallest office buildings; that in the construction of said bill-boards every reasonable precaution has been taken to insure safety from fire, all the frames and facings thereof being of galvanized steel; that many tests have demonstrated that said bill-boards will not carry fire, and if set on
13 fire will not burn unless through the intervention of other causes; that it has never lost a bill-board through fire nor has any of its bill-boards been blown down; consequently no fire or tornado insurance is carried thereon; the same are in numerous instances safely and carefully equipped with electric wires and lighted with electricity; that all its said bill-boards and signs are kept in a safe, permanent, substantial, workmanlike and sanitary condition, so that the same do not in anywise endanger or menace the lives or safety of persons passing by or in close proximity to said bill-boards and signs; that said bill-boards are made of the best material; that the same are maintained, managed and conducted in such manner as not to create a nuisance in fact or in law; that none of its said bill-boards or signs have ever been condemned or charged by the officials of the City of St. Louis to be a nuisance or a menace or detriment to the public welfare, health, morals or safety of the City of St. Louis or any of its inhabitants, and that the service rendered by plaintiff has become a commercial necessity to many enterprises doing lawful business in the City of St. Louis; that plaintiff has expended large sums of money in procuring leases from the various owners of lots upon which said bill-boards are erected, and in procuring permission to erect signs on buildings where it has placed such signs; that said leases and permit contracts run from three to five years in length of time; that plaintiff has from time to time made numerous contracts with its customers for the display of advertising matter upon said bill-boards and signs, which said contracts run from six months to three years; that plaintiff, by said contracts, is obligated to maintain upon said bill-
14 boards and signs within the City of St. Louis the advertisements of such customers, and the income of plaintiff is derived solely from the payments which said customers make to plaintiff for erecting and posting their advertisements and maintaining the same for the periods of time required by said contracts.

VI.

Plaintiff further states that on or about the 7th day of April, 1897, the City of St. Louis, by its Municipal Assembly and Mayor, passed, or attempted to pass, an ordinance known as and numbered 18961, a part of which ordinance attempted to regulate the erection of bill-boards in the City of St. Louis, and is in words and figures as follows, to-wit:

"Section 209. Bill-boards.—Hereafter no bill-board shall be erected in the city limits, without first securing a permit from the Commissioner of Public Buildings, for which a fee of one dollar for every twenty-five feet or fraction thereof, shall be paid, and the manner of construction, location, and dimensions of such bill-boards shall have

the approval of the Commissioner of Public Buildings. No bill-board shall be erected within the fire limits which shall exceed fourteen feet high, but all bill-boards shall have at least two feet of clear space from the lower edge of the board to the ground under said bill-boards. It shall be unlawful to place one bill-board over another, thereby increasing the height of such bill-boards."

VII.

Plaintiff further states that the City of St. Louis, by its Municipal Assembly and Mayor, on or about the 7th day of April, 1905, attempted to pass a pretended ordinance known as and numbered 22022, said pretended ordinance purporting, among other things, to revise the building code of the City of St. Louis, the object and purpose of said pretended ordinance, as set forth in sections 1 and 2 thereof, being in words and figures as follows, to-wit:

"An ordinance to revise the Building Code of the City of St. Louis, being Article four, Chapter one, of the Municipal Code, by repealing Sections thirty-eight to two hundred and fifty-three, inclusive, of said article, and enacting in lieu thereof a new ordinance governing the construction and erection, reconstruction, alteration, repair, remodeling, changing, moving, removal and securing of buildings in said city, and providing for the safety of buildings when so erected; also regulating the use of and providing for the safety of the public in theaters, opera houses and other buildings devoted to public amusement:

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections thirty-eight to two hundred and fifty-three, inclusive, of the Municipal Code, are hereby repealed, and it is hereby enacted that the construction, erection, repairing and altering, or removal of buildings in the City of St. Louis shall hereafter be in conformity with this ordinance. Provided, that nothing in this ordinance shall be construed to prevent the completion of any building operations for which permits shall be in force at the time of the approval of this ordinance, in accordance with the terms of the ordinance in force at the time of the issuance of such permit."

Plaintiff further represents that the provisions of said pretended ordinance No. 22022 applicable to plaintiff's business are in words and figures as follows, to-wit:

"Section Two. Permit Required.—No work, except minor repairs, shall be done upon any structure, building or shed in the City of St. Louis without a permit from the Commissioner of Public Buildings. Before proceeding with the erection, enlargement, alteration, repair or removal of any building in the City, a permit for such erection, enlargement, alteration, repair or removal shall first be obtained by the owner or his agent from the Commissioner of Public Buildings, and it shall be unlawful to proceed with the erection, enlargement alteration, repair or removal of buildings or of any structural part thereof, or of any structure which is to be used for the support, shelter or inclosure of persons, animals or chattels

within the City, unless such permit shall first have been obtained from the Commissioner of Public Buildings."

"Section Fourteen. Cost of Permits.—The fee to be paid for a permit for the erection or alteration of buildings, shall be one dollar, if the estimated cost of said building or buildings, or alteration, shall be less than one thousand dollars, and for every additional one thousand dollars of cost, or fraction thereof, the further sum of fifty cents shall be paid. If it should appear to the Commissioner of Public Buildings, during the erection of any building or buildings for which a permit has been issued, that the cost of said building is in excess of the amount stated in the original application, the Commissioner of Public Buildings shall have the right to re-estimate the cost of any such building or buildings, and require the owner of
17 said building or buildings to pay an additional fee, so that the fee paid shall conform to the entire cost of said building or buildings, as provided for in this section. The fee to be paid for a permit to remove a building shall be one dollar if the building covers twenty-five hundred square feet or less of area, and the further sum of fifty cents shall be paid for every additional twenty-five hundred square feet of area or part thereof. The fee to be paid for a permit to erect signs, as provided in section eighty-one of this ordinance, shall be at the rate of one dollar for every twenty-five square feet of area of such sign, or portion thereof. Each such permit shall state thereon the number and size of signs permitted thereby, and the street and number of the premises whereon they are to be placed. The fee to be paid for a permit to erect bill-boards, shall be at the rate of one dollar for every five lineal feet thereof, and each such permit shall state thereon the length of bill-boards permitted thereby, and the street and number of the premises whereon they are to be erected and their distance from the line of the street. The fee to be paid for a permit to erect or install any heating or power apparatus, as required in sections one hundred and nine and one hundred and ten, shall be one dollar for every such apparatus."

"Section Eighty-one. Signs.—Any signs now erected, or that may be hereafter erected, on the top of any building, or attached to the walls of any building, and that may become rotten or unsafe, shall be taken down and removed upon notice so to do from the Commissioner of Public Buildings. No signs exceeding twenty square feet in size shall hereafter be erected on any building without
a permit from the Commissioner of Public Buildings, as pro-
18 vided in sections two and fourteen of this ordinance. No sign exceeding three and one-half feet in width, or ten feet in height shall hereafter be attached to any building, unless such sign is constructed wholly of metal or other non-combustible material. When two or more signs are placed on any building, one above another, the width or height of the signs shall be measured as if there were but one sign, and the spaces between the signs shall be included in the width of the signs, unless there be a clear space of at least six feet between the signs. No sign shall hereafter project more than eighteen inches over the building line of any street

or alley, nor shall any projecting sign be placed nearer than eight feet to the ground or pavement of any street or alley; nor shall any sign be so placed as to obstruct any fire escape, or interfere with the operation of the fire department. Every sign hereafter erected upon any building shall be supported upon heavy iron braces bolted to the walls or roofs of the building in a firm and secure manner; and it shall be unlawful for any person, firm or corporation to erect or cause to be erected any sign in violation of this section."

"Section Eighty-two. Towers, Dormers and Spires on Top of Buildings.—Towers, dormers and spires may be erected on the roofs of buildings, but shall not occupy more than one-quarter of the street frontage of any building, and shall not in any case have a base area of more than sixteen hundred square feet. All such dormers, towers or spires shall be built of non-combustible materials. Towers, dormers or spires shall not be permitted on buildings of the second and third class where the extreme height of the top of the tower, dormer or spire shall exceed one hundred and fifty feet above the street grade."

19 "Section One Hundred and Seventy-seven. Bill-boards.—Hereafter no bill-board having twenty-five square feet or more of surface shall be erected, altered, refaced or reconstructed without a permit from the Commissioner of Public Buildings, and the manner of construction, location and dimensions of such bill-board shall be subject to the approval of the Commissioner of Public Buildings, in accordance with the provisions of this section. The term 'bill-board' within the meaning of this section shall include all structures of whatever material the same may be constructed, which are erected, maintained or used for the public display of posters, painted signs, pictures or other pictorial or reading matter, except that the term 'bill-board' shall not be applied to such signs as are attached to the roofs or walls of buildings, as provided for in section eighty-one of this ordinance. No bill-board hereafter erected, altered, replaced or reconstructed shall exceed fourteen feet in height above the ground, and every such bill-board shall have an open space of at least four feet between the lower edge and the ground, which space shall not be closed in any manner while the bill-board stands; nor shall any such bill-board approach nearer than six feet to any buildings nor to the side line of any lot nor nearer than two feet to any other bill-board, nor shall any such bill-board exceed five hundred square feet in area, nor approach the street line on any street, alley or right-of-way on which any lot fronts or abuts nearer than fifteen feet, but in all cases where the building line of buildings within fifty feet of the proposed bill-board is more than fifteen feet from the street line or boundary line then such bill-board shall not approach nearer to such street line or lot boundary line than the distance that the building line

20 of such building is from such street line or lot boundary line; and where buildings are hereafter built near or adjacent to bill-boards such bill-boards shall be so moved or cut off as to leave a space of not less than six feet between the building and such bill-board, which shall in all other respects also comply with the terms of this section. Any bill-board which may now be or hereafter become

rotten or unsafe, and any bill-board which shall hereafter be erected, altered, refaced or reconstructed, contrary to the provisions of this section, or any of them, shall be removed or otherwise properly secured in accordance with the terms of this section by the owner thereof, or by the owner of the ground on which such bill-board shall stand, upon receipt of proper notice so to do, as provided in section one hundred and seventy-nine of this ordinance, for the removal of unsafe structures, and no rotten or unsafe bill-board shall be repaired or rebuilt, except in accordance with the provisions of this section and upon a permit issued from the Commissioner of Public Buildings."

"Section One Hundred and Seventy-nine. Unsafe Structures—Notice to Remove or Make Secure—Condemnation Cost, How Paid—Failure to Comply With Notice Misdemeanor—Penalty.—Whenever the Commissioner of Public Buildings shall be informed or have reason to believe that any building or other structure within the City of St. Louis is in a condition or situation to endanger the lives of persons passing or residing in the vicinity thereof, or to endanger property, he shall immediately proceed to make a survey or examination of said building or other structure, and if, in his opinion, said building or other structure is in a condition or situation to endanger
21 the lives of persons or injure property, he shall notify the owner or owners of such building or other structure to have the same removed or otherwise properly secured within three days after service of such notice, and should said owner or owners fail to comply with said notice it shall be the duty of the Commissioner of Public Buildings to proceed forthwith to have the same secured so as to render it safe unless, in his judgment, the same cannot reasonably be secured or rendered safe, in which case he shall demolish and remove the same, or so much thereof as may be necessary. The cost of securing said building or other structure or demolishing the same, or any part thereof, by the Commissioner of Public Buildings, shall be paid in the first place by the City out of a contingent fund, for which there shall be made an annual appropriation of not less than one thousand dollars for the purpose here designated. The Comptroller, upon receipt of a certificate from the Commissioner of Public Buildings of the amount expended by him for the securing or demolishing of any such building or other structure, which certificate shall be approved by the Mayor, shall then make out bills for said work against the owner or owners of said building or other structure. In case said bills are not paid upon presentation they shall be placed in the hands of the City Attorney or in the hands of some officer of the law department, who shall proceed to collect the same, by suit if necessary, and the amounts when collected shall be credited to said contingent fund. Every such owner who shall fail to comply with the requirements of the notice hereinbefore in this section provided for, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than five hundred dollars."

22 "Section One Hundred and Eighty. Same—Notice, How Given—Interference With Giving Notice Misdemeanor—Penalty.—The notice to the owner of building or structure found to

be dangerous by the Commissioner of Public Buildings, as provided in section one hundred and seventy-nine shall be directed to the owner or owners of such buildings or other structures by name, if known; if not known, then under the designation of the owner or owners of the building or structure designating it, and may be served in any one of the following ways:

"First. By causing said notice to be delivered to such owner either in the City of St. Louis or elsewhere.

"Or, second, by posting copy of such notice upon the building or other structure, said notice to be deemed served at the end of twenty-four hours after the posting thereof.

"Or, third, by mailing such notice, or copy thereof, inclosed in a sealed envelope, postage prepaid, directed to such owner, either at his business or residence address in this City or elsewhere, said notice to be deemed served twenty-four hours after the mailing of said notice, in case it is directed to the business or residence address of the owner in the City of St. Louis. Provided, that if the said owner or owners be non-residents of the City of St. Louis, and have no business addresses or offices in the City of St. Louis, then the said notice shall be deemed served at the end of such period after the mailing thereof as in the ordinary course of transmission of the mails by the United States Government would be required for the receipt of said notice by the owner or owners at their place of residence or business.

"Or, fourth, by publication in the newspaper doing the
23 City printing, said notice to be deemed served twenty-four hours after publication.

"In case such building or other structure is in the occupancy of a tenant or tenants it shall be the duty of the Commissioner of Public Buildings to post a copy of such notice upon such building or other structure.

"Every person who shall attempt to prevent the Commissioner of Public Buildings, or any other employe of the City of St. Louis, from posting such notice on such building or other structure, or shall remove said notice or mutilate it or deface it, within four days after the same is posted, unless in the meantime such building or other structure has been put in a safe condition or been demolished, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than five hundred dollars."

"Section One Hundred and Eighty-one. No agent of the owner of any building or other structure shall, after notice from the Commissioner of Public Buildings that such buildings or other structure is unsafe or dangerous, rent or lease the same or any part thereof, or collect any rent therefor until such building or other structure shall be rendered safe and secure or shall be demolished. Every agent who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than five hundred dollars."

"Section One Hundred and Eighty-two. Commissioner's Power to Enforce Ordinance.—The Commissioner of Public Buildings shall have power to require all persons to correct, remove or abate

any state of things done, caused or permitted by them in violation of this ordinance; and he shall upon a failure to comply with the requirements of this ordinance, when the public interest may so require, correct, remove or abate the same and all costs attending such action in such cases shall be paid from the contingent fund as provided in section one hundred and seventy-nine, and then collected from the party offending as there provided, and the same shall also be a lien against the property whereon such violation was permitted to exist, to be collected as provided by law for liens in such cases; and any person, firm or corporation, who shall refuse or neglect to comply with the provisions of this section, or who shall violate any of the provisions thereof, shall be deemed guilty of a misdemeanor and shall be subject to the penalty as provided in section one hundred and eighty-four of this ordinance."

VIII.

Plaintiff avers that said ordinances or pretended ordinances, and each section thereof, are unconstitutional and wholly void for the following, among other, reasons:

1. The City of St. Louis has no authority or power in law to make the regulations contained in said ordinances, and has no power or authority to deprive the owners and lessees of private property of the unrestricted, free and reasonable use thereof, as by the said ordinances is attempted to be done.

2. The provisions of said ordinances are unreasonable, unjust and oppressive, and go far beyond any regulations necessary for the protection of the lives, morals and property of the inhabitants of the City of St. Louis.

3. Said ordinances are not uniform in their operation upon all classes to which they apply, but discriminate against structures erected for advertising purposes, and discriminate against them merely because they are erected for advertising purposes.

4. Said ordinances undertake to force the same limitations and regulations upon advertising structures or bill-boards in the open and unsettled part of the City as in the downtown and thickly settled sections.

5. Said ordinances, as interpreted and threatened to be enforced by the Commissioner of Public Buildings, prohibit plaintiff from making reasonable and necessary repairs on the signs and bill-boards heretofore by it erected, and thus will prevent it from relieving itself from great loss and from prospective liability for damages which might arise by reason of injuries caused by boards that become unsafe.

6. Said ordinances, if and as threatened to be enforced, would deprive the owners and lessees of private property within the limits of the City of St. Louis, and especially this plaintiff, of the lawful and reasonable use of that part of said property which lies within fifteen feet of any public street or within six feet of any building, without any necessity therefor and without any compensation whatever.

7. That said ordinances arbitrarily, oppressively and unreasonably limit the height and size of bill-boards, without regard to the location or the surrounding conditions.

8. Said ordinances attempt to prescribe an unjust, unreasonable and oppressive fee to be paid for permits to erect signs and bill-boards within the City of St. Louis, without any reason therefor, and said fees are far in excess of and more than five hundred
26 times greater than the fees charged for similar permits for any other structures or buildings, involving as much and greater service by the officers of the city.

9. Said ordinances attempt to prescribe the kind of material out of which signs of certain dimensions shall be constructed, without regard to the requirements of the location and surroundings of said signs.

10. Said ordinances are designed to and do discriminate against the lawful business in which plaintiff is engaged, and were designed to and ultimately will deprive plaintiff, and all others engaged in the same business, of their present plants, and will drive them entirely out of business in the City of St. Louis.

11. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that they deprive plaintiff and the owners, lessees and occupants of its and their property, by imposing an unnecessary and unreasonable limitation upon plaintiff's business and upon the use of lands and property in the City of St. Louis for the construction and maintenance of bill-boards and structures for the display of poster advertisements.

12. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they constitute a taking of the property of plaintiff, and of the owners, lessees and occupants of lands in the City of St. Louis, for an alleged public use without just compensation.

13. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that the limitation which they impose upon the use
27 of real property of plaintiff and others in the City of St. Louis constitutes the taking of private property for a use which is not public and without just compensation.

14. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by denying to plaintiff, and to the aforesaid owners, lessees and occupants of lands in the City of St. Louis, the equal protection of the laws of the State of Missouri, and that they violate the same section by abridging the privileges and immunities of plaintiff and the aforesaid owners, lessees and occupants, being individuals and citizens of the United States.

15. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff of the right of carrying on the lawful business of displaying advertisements upon its boards, so constructed on private property as not to endanger the safety of the

public; and also in that said ordinances violate the same provisions by depriving plaintiff and the owners, lessees and occupants of lands in the City of St. Louis of the right and privilege to use and derive profit from the erection and maintenance upon such lands of bill-boards so constructed as not to endanger the safety of the public, although exceeding in dimensions the limitations attempted to be imposed by said ordinances.

16. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff and the owners, lessees and occupants of lands within the City of St. Louis of their liberty without due process of law, to-wit, the liberty of maintaining, erecting
28 and displaying and permitting to be maintained, erected and displayed bill-boards, so constructed as not to endanger the safety of the public, although exceeding in dimensions, and otherwise, the limitations attempted to be imposed by the aforesaid ordinances, thus depriving plaintiff of the liberty to carry on a lawful business, without unreasonable restrictions, and depriving the said owners, lessees and occupants of the liberty of making a beneficial and profitable use of their property.

17. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States in that they deprive plaintiff of its property without due process of law and without just compensation.

18. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States, in that said ordinances were not intended to regulate the construction and maintenance of bill-boards in the City of St. Louis, nor to impose reasonable restrictions on the construction thereof, in the exercise of the police power of the city, but to destroy the property of plaintiff and deprive it of the use thereof without just compensation.

19. Because said ordinances violate Article III, Section 26, paragraph 14, of the Charter of the City of St. Louis, in that they do not encourage or maintain the good government of the city, its trade, commerce or manufacture, but are inconsistent with the laws and Constitution of the State of Missouri; and the broad grant of police power under said Article III, Section 26, paragraph 14, cannot confer upon the City of St. Louis any power not in
29 harmony with the Constitution and laws of Missouri, as expressly provided in Article IX, Section 23.

20. Because said ordinances violate the provisions of Article II (known as the Bill of Rights), Section 30, of the Constitution of the State of Missouri, in that they constitute a taking of the property of plaintiff without due process of law.

21. That the provisions of said pretended ordinance amount to the taking of the property of plaintiff for an alleged public use without just or any compensation, in violation of Section 21 of Article II of the Constitution of Missouri.

22. That said pretended ordinance, if enforced, will be retrospective in its operation and will deprive plaintiff of its property

lawfully acquired prior to the passage of said pretended ordinance, in violation of Section 15 of Article II of the Constitution of Missouri.

IX.

Plaintiff further represents that a large number of the said bill-boards and signs heretofore constructed by it have been erected in conformity with ordinances under permits and licenses issued by the duly constituted authorities, officers and agents of the City of St. Louis, and that it has paid the City of St. Louis large sums of money for said permits and licenses; and it further avers that in each and every instance where it has erected new bill-boards, or repaired those in need of repairs, it has at all times first tendered to the said City of St. Louis, its officers and agents, all lawful fees required by the valid ordinances of the City of St. Louis, and no bill-boards or signs have ever at any time been erected or repairs made by it except with notice to and under the immediate observation of the City of St. Louis, its officers and agents, and at all times their attention has by it been directed to the manner in which said work was being done and their advice was sought and welcomed, and no bill-board or sign has ever been erected by or for it, or repairs made thereon other than in a thoroughly substantial, safe, permanent and workmanlike manner, and in strict compliance with all the valid ordinances of the City of St. Louis.

X.

Plaintiff further represents that all its said bill-boards and signs in the City of St. Louis are at the present time in a thoroughly safe condition and in good repair; that the same have been constructed in accordance with designs and specifications prepared by competent engineers and so as not to be or become dangerous, and so as not, in any way, to increase hazard from fire; that said bill-boards will safely withstand a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressure specified by the building ordinances of the said City of St. Louis for the frames of steel skeleton buildings and corresponds to a velocity of wind of eighty-three miles per hour, which is a greater velocity than any of record in said City of St. Louis; that well-known architects and engineers who have examined the construction of said bill-boards declare the same to be safe, secure and well built.

That the specifications in accordance with which all said bill-boards have been constructed are as follows:

31 *Specifications*

For the Construction, Sizes, and Quality of Timbers Used in the Construction of Bill-boards by the St. Louis Poster Advertising Company.

Anchor Posts—All anchor posts placed in the ground for securing braces to brace bill-boards shall be 6′ x 6″ white cedar, round or square. The anchor post shall extend not less than 4′ 0″ nor more than 5′ 0″ into the ground, with pine cross-pieces or dead-men securely nailed parallel with and below the surface of the ground, one dead-man or tie to be attached to and securely nailed to the anchor on the front side, not less than 12 -or more than 18 inches below the surface of the ground; the second dead-man or tie piece to be nailed in a like manner to the rear side of the anchor at the bottom of the anchor, with thirty-penny nails to same to prevent them from being pulled out of the ground.

Uprights—The upright members for securing cross-rails to sheath to shall be 4′ 6″ cypress; shall extend from a depth of 4′ 0″ in the ground to the height of sheathing and set not more than 7′ 11″ on center.

Cross-rails—Cross-rails for nailing sheathing shall be 2″ x 4″ No. 1 common yellow pine, securely spiked to uprights with thirty-penny nails. The lower rail shall set not less than 2′ 0″ above the surface of the ground and all rails above about 5″ 0″ on center.

Braces—Secured by nailing with thirty-penny nails to uprights about two feet from their top and to cedar anchor posts, shall be of 2-2″ x 6″ pieces spiked together with thirty-penny nails, No. 1 common yellow pine. The long braces on double-deck boards will be tied together for stiffening with 2″ x 4″ No. 1 common
32 yellow pine, bracing securely nailed with thirty-penny nails on top of braces, midway between anchor post and contact with upright, about two feet from top of upright, and further stiffened by lateral braces of 2″ x 4″ No. 1 yellow pine nailed with thirty-penny nails in lace or cross-fashion throughout length of bill-board. All long braces to be supported in the center by nailing a 3 x 4 No. 1 yellow pine brace thereto with thirty-penny nails and to the corresponding 4 x 6 upright post at top of ground.

All of the above section to be well spiked together with thirty-penny nails. All facings shall be of galvanized steel built in panel form and securely nailed to front of structure and fastened to front structure by being securely nailed to rails and uprights and divided into 25-foot panels framed and rim-faced with 6-inch crown moulding securely nailed to the front of the galvanized steel facing or posting surface.

And all said bill-boards are designed and constructed in accordance with a blue print hereto attached and made a part hereof and marked "Exhibit A." That to further show the Court the manner in which all said bill-boards have been constructed eight pictures

of certain of said bill-boards now in use by plaintiff in the City of St. Louis are hereto attached, made a part hereof, and marked Exhibits B, C, D, E, F, G, H and I.

That skillful engineers, architects and builders who have examined said bill-boards and signs and the plans and specifications in accordance with which said bill-boards and signs have been constructed and maintained declare the same to be safe, secure and sanitary, as shown by the following affidavits:

33 *Affidavit of Andrew J. O'Reilly.*

STATE OF MISSOURI,
City of St. Louis, ss:

Andrew J. O'Reilly, being first duly sworn, states upon his oath, that he graduated from the Engineering Department of the Washington University of this city in 1889, and that since said date he has followed the profession and occupation of a civil and mechanical engineer; that from May, 1905, until May, 1909, he was president of the Board of Public Improvements of the City of St. Louis, and that since the last-named date he is a consulting engineer, and as such examined plans and specifications of bill-board construction attached to the bill of complaint in the case of St. Louis Poster Advertising Company v. City of St. Louis et al.; that he computed the loads that the several parts of the structure will bear with safety and without danger of being disrupted or torn from the ground; that the computations made by him result in the conclusion that if the said plans and specifications are carried out with the materials usually furnished when so described in the specifications, and fitted and put together with the usual skill of workmen ordinarily engaged in this class of work, the bill-boards so constructed will, in his opinion, withstand a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressume specified by the building ordinances of the City of St. Louis for the frames of skeleton buildings and corresponds to a velocity of wind of eighty three miles per hour; that in his opinion bill-boards so constructed will
34 withstand a greater wind pressure than thirty pounds per square foot.

ANDREW J. O'REILLY.

Sworn to and subscribed before me this 4th day of February, 1914. My term expires May 11, 1915.

[SEAL.] SARAH E. HORAN,
Notary Public, City of St. Louis.

Affidavit of James A. Smith.

STATE OF MISSOURI,
City of St. Louis, ss:

James A. Smith, being first duly sworn, states upon his oath that he has for many years been an architect and builder in the City of

St. Louis; that he was Commissioner of Public Buildings of the City of St. Louis for a term of six years, his term of office having expired in the month of May, 1911; that he has examined the plans and specifications attached to the bill of complaint in the case of St. Louis Poster Advertising Company v. City of St. Louis et al.; that bill-boards so constructed will, in his opinion, safely withstand a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressure specified by the building ordinances of the City of St. Louis for the frames of skeleton buildings and corresponds to a velocity of wind of eighty-three miles per hour; that bill-boards constructed in conformity with said plans and specifications are, in his opinion, absolutely secure and safe; that the same will not become loose or unstable through the falling of rains or dampness of soil; that he has examined several of the bill-boards now owned and maintained by the complainant in the City of St. Louis and that the same are constructed and maintained in
35 a safe, secure and workmanlike manner and do not in anywise endanger either life or property.

JAMES A. SMITH.

Sworn to and subscribed before me this 4th day of February, 1914. My term expires May 11, 1915.

[SEAL.] SARAH E. HORAN,
Notary Public, City of St. Louis.

Affidavit of James M. Sullivan.

STATE OF MISSOURI,
City of St. Louis, ss:

James M. Sullivan, being first duly sworn, on his oath states that he is a superintendent builder and has been engaged in that work in the City of St. Louis for a great many years; that for ten years he was employed in the office of the Commissioner of Public Buildings of the City of St. Louis, and that from about June 1, 1905, until about September 1, 1911, or a period of about six and one-half years, he was chief inspector in the office of said Commissioner of Public Buildings for the City of St. Louis; that during his said term as such chief inspector he had immediate supervision of the inspection of buildings and structures generally throughout the City of St. Louis; that the work of inspection of condition of bill-boards and signs throughout the City of St. Louis was under his immediate charge during said time of about six and one-half years; that during said time no bill-board in said City of St. Louis was ever condemned as unsafe, unsanitary or dangerous to life or property; that during said time there was never a bill-board, in so far as he can recall, destroyed by fire nor an instance where a bill-board carried
36 or caused a fire; that the maintenance of said bill-boards was not opposed to the public health, morals, safety or general welfare of the public; that said bill-boards were never, in his opinion, a hiding place for criminals, for illegal practices or deposit of refuse;

that he has examined the blue print marked "Exhibit A" attached to the bill of complaint and the specifications contained therein in the case of St. Louis Poster Advertising Company v. City of St. Louis et al., and it is his opinion that said bill-boards are absolutely safe, secure, substantial, and do not endanger life or property; that the same will not become loose and are not liable to fall through dampness of soil and rains, nor has he ever known of any person being injured or sustaining a loss of property on account of said bill-boards, and that no bill-board has ever, to his knowledge, been condemned as a nuisance.

JAMES M. SULLIVAN.

Sworn to and subscribed before me this 5th day of February, 1914. My term expires May 11, 1915.

[SEAL.] SARAH E. HORAN,
Notary Public, City of St. Louis.

Affidavit of H. W. Powers.

STATE OF MISSOURI,
City of St. Louis, ss:

H. W. Powers, being first duly sworn, upon his oath states that he is a practical architect, and has been engaged in said business in the City of St. Louis for many years; that he was from about the 1st day of June, 1905, until the 1st day of September, 1911, engaged as architect and as superintendent of designs and buildings in the office of the Building Commissioner of the City of St. Louis;
37 that he has carefully examined the plans marked "Exhibit A" attached to the bill of complaint and the specifications contained therein in the case of the St. Louis Poster Advertising Company v. City of St. Louis et al.; that a bill-board constructed in accordance with said plans and specifications will safely withstand a wind pressure of thirty pounds per square foot in either direction, which is the assumed wind pressure specified by the building ordinances of the City of St. Louis for the frames of skeleton buildings and corresponds to the velocity of wind of eighty-three miles per hour; that he has carefully examined a great number of bill-boards and signs now maintained and operated by said complainant in the City of St. Louis; that said bill-boards so maintained and operated by said complainant are constructed in a secure, safe, sanitary and workmanlike manner; that roberries are often committed by persons hiding at the entrance of alleys or in doorways, in weeds upon vacant lots, behind trees or telephone posts and many other places where they may conceal themselves; that illegal practices all occur in all such places; that he has no knowledge of any robberries or illicit practices committed behind bill-boards owned by Complainant.

H. W. POWERS.

Sworn to and subscribed before me this 4th day of February, 1914. My term expires May 11, 1915.

[SEAL.] SARAH E. HORAN,
Notary Public, City of St. Louis.

38 *Affidavit of Ernest J. Russell.*

STATE OF MISSOURI,
City of St. Louis, ss:

Ernest J. Russell, being first duly sworn, states upon his oath that he is a member of the firm of Mauran, Russell & Crowell, architects in the City of St. Louis; that he has examined the blue print marked "Exhibit A" attached to the bill of complaint and the specifications therein contained in the case of St. Louis Poster Advertising Company v. City of St. Louis et al.; that a bill-board constructed in accordance with said plans and specifications will safely withstand a wind pressure of thirty pounds per square foot in either direction, which is the assumed wind pressure specified by the building ordinances of the City of St. Louis for the frames of steel skeleton buildings and corresponds to a velocity of wind of eighty-three miles per hour; the anchor piers will not be disturbed in their position until the wind pressure exceeds the assumed pressure by fifty per cent; the metal facing is designed for a factor of safety of five; the design of said bill-board is simple and the stresses can be accurately computed; that bill-boards so constructed are, in my opinion, absolutely secure and safe and do not constitute a menace to life or property.

ERNEST J. RUSSELL.

Subscribed and sworn to before me this 4th day of February, 1914. My term expires May 11, 1915.

[SEAL.] SARAH E. HORAN,
Notary Public, City of St. Louis.

Plaintiff further states that defendant, the Commissioner of Public Buildings of the City of St. Louis, has repeatedly refused
39 and still refuses to issue permits to plaintiff for the construction or repair of its said bill-boards and signs in the City of St. Louis in accordance with valid ordinances of the City of St. Louis, and has declared his intention of enforcing or attempting to enforce said pretended ordinance and each and every provision thereof, and to require plaintiff to tear down all said bill-boards and reconstruct the same in accordance with the provisions of said pretended ordinance; that to tear down and reconstruct all of said bill-boards and signs as required by the terms of said pretended ordinances plaintiff would be compelled to pay the City of St. Louis a large sum of money in fees for permits, and greatly in excess of fees, to-wit, more than five hundred times the amount, required for any other class of buildings, repairs or improvements in the City of St. Louis; that it would also be compelled to tear down and destroy all the bill-boards and signs which it had erected in accordance with permits issued by the City of St. Louis before the passage of said pretended ordinances; that in rebuilding, in accordance with the provisions of said pretended ordinance, it will be put to great ex-

pense and loss; that in rebuilding in accordance with the provisions of said pretended ordinance, the total number of square feet of space now used by plaintiff would be reduced by about 35 per cent to 40 per cent; that by reducing the size of said bill-boards to the height and length required by said pretended ordinance the face or posting surface thereof would be far less than that required for said standardized advertising and the entire line of said advertising would be a total loss to plaintiff; that in addition to the great
40 loss and shrinkage many of plaintiff's contracts would be forfeited and canceled and plaintiff subjected to heavy damages for not fulfilling them; that under the provisions of said pretended ordinance no bill-board can be erected on a lot with a frontage of thirty feet or less because said boards are not allowed to extend nearer than fifteen feet of a boundary line, and in very many instances plaintiff cannot, because of the unreasonable provisions of said pretended ordinance, utilize the same for bill-board advertising; that in addition to the great loss plaintiff will sustain by reason of the loss of so large part of its business and its inability to use at all many of the lots now leased, it will be required to pay under its outstanding leases the same rental to owners that it has heretofore paid; that it is therefore impossible for plaintiff to continue in business and comply with said pretended ordinances; that if said pretended ordinances are upheld and enforced, plaintiff will be prevented from increasing its business in the City of St. Louis and will be deprived of its entire plant and business and its property will be taken and destroyed without just compensation therefor; that it is impossible for plaintiff to comply with the provisions of said pretended ordinances and carry out the contracts now existing, because said boards would not contain sufficient surface for posting standardized advertising, nor could plaintiff, by reason of the great shrinkage which would result from a compliance with said pretended ordinance, carry on the lawful business in which it is now engaged; that it has endeavored to comply with said pretended ordinance and actual experience has demonstrated that it cannot remain in business and comply with its terms.

41 XII.

That plaintiff has in all instances when it desired to erect a new bill-board or sign or make needed repairs thereon first submitted proper designs and tendered all lawful fees required by the valid ordinances of the City of St. Louis to the said Building Commissioner and requested him to issue permits therefor, but he has repeatedly refused, and still refuses, to issue such permits, notwithstanding such offers and tenders to him by plaintiff therefor; that it is now being threatened by defendants, who declare that said pretended ordinances will be enforced, and plaintiff has received from the defendant, the said Building Commissioner of the City of St. Louis, notices in writing declaring his intention to proceed immediately, or within three days from the date of said notices, to tear down and destroy each and every one of the said bill-boards and

signs of plaintiff in the City of St. Louis unless plaintiff, before the expiration of said three days, tears down or reconstructs the same, in accordance with the terms of said pretended ordinance, and plaintiff shows that all of said notices are in the same language save only as to locations of the properties, on which said bill-boards stand, which said notice is in words and figures as follows, to-wit:

1056-66 Olive St.

Owner of Bill-board.

STATE OF MISSOURI,
City of St. Louis, ss.

City of St. Louis, Mo.,
Jan. 23, 1911.

To St. Louis Poster Adv. Co., Greeting:

Take Notice that a certain bill-board, having a surface of more than twenty-five square feet, erected by you, and which
12 you are now maintaining on a certain parcel of ground, owned by Frank A. Ruf, known as lot number as below in city block number 3924, and in the City of St. Louis, has been examined by this department and found to have been erected by you in direct violation of Section Four Hundred and Ninety-eight of the Revised Code of 1912, of the City of St. Louis, in the following respects, namely, that said bill-board was erected without a permit from this department and without its approval; that said bill-board exceeds 500 square feet in area; extreme height above the ground exceeds 14 feet; has a space of less than 1 feet between lower edge of board and ground; is less than 15 feet distant from nearest street and less than 6 feet distant from nearest building. (Lot situated at the S. E. corner of Sarah and Olive streets, and having a frontage of 152 feet, more or less, on the south line of Olive street.)

Therefore, acting under and by virtue of authority in me vested, by Sections Four Hundred and Ninety-eight and Five Hundred of the Revised Code of 1912, of the City of St. Louis, I hereby command you to remove the said bill board from the said lot of ground within three days, next, immediately after the service of this notice upon you, or that you take down said bill-board within three days, and if you desire to maintain a bill-board on said lot, procure a permit from this department to re-erect same or to so change or alter said bill-board as to location or manner of construction, or both, as will cause it to fully comply with all of the requirements of Section Four Hundred and Ninety-eight of said Revised Code, a copy of which is hereto attached and made a part hereof.

Respectfully,

J. N. McKELVEY,
Commissioner of Public Buildings.

43 That in no instance have the defendants, or any of them, inspected or pretended to inspect, said bill-boards or signs, or any of them, with a view to determine whether or not the same are in need of repairs or in a dangerous condition, nor have the defendants, or either of them, claimed that said bill-boards or signs, or any of them, are in an unsafe, unsanitary or dangerous condition, or that the same, or any of them, are, as a matter of fact, in an unsafe condition; that plaintiff has never been notified by said defendants, or any of them, that said bill-boards or signs were or are in an unsafe condition, or in need of repairs, but, notwithstanding the absolutely safe condition of said bill-boards and signs, said defendant, the Building Commissioner, is now threatening and proceeding to knock down, demolish and destroy, by force of arms, the said property of plaintiff, giving as his only reason therefor that plaintiff has failed to comply with the said pretended ordinances; that said defendant, the said Building Commissioner, now has a large force of men at work tearing down and destroying plaintiff's said property, and declares that it is his intention to so proceed with tearing down said bill-boards and signs, until every one of the same has been torn down; that plaintiff has forbidden said defendants, and each of them, to interfere with or damage its property, but defendants have threatened to, and still threaten to, and declare they will arrest plaintiff, its officers and agents, if in any manner they, or any one of them, resist defendants, or attempt to prevent them from so demolishing and destroying, by force of arms, all plaintiff's said bill-boards and signs, and plaintiff shows that its said property is being so destroyed, ruined and demolished
44 by said defendant, the Building Commissioner of the City of St. Louis, without any compensation therefor and in total disregard of its rights under the Constitution and laws of the United States and of the State of Missouri.

XIII.

Plaintiff further states that it is informed and believes, and therefore charges that Henry W. Kiel, Mayor of the City of St. Louis, has directed the Commissioner of Public Buildings to destroy and tear down the property of plaintiff, unless it complies with the unreasonable, unnecessary and illegal terms and conditions of said pretended ordinances, within the time required in said notice given by said Building Commissioner; that said Building Commissioner and police officers of the City of St. Louis have expressed their determination and threats to enforce said unreasonable, illegal and unnecessary provisions of said pretended ordinances to the great injury, loss and utter ruin of plaintiff.

XIV.

Plaintiff further states that unless the said City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, who are defendants to this bill of complaint, are restrained by the injunction of

this honorable Court from proceeding to tear down the said bill-boards and signs of plaintiff and from enforcing against plaintiff the provisions of said pretended ordinances, that the business of plaintiff will be irretrievably ruined, all the property of plaintiff torn down and destroyed, without due process of law or just
45 compensation therefor, its profits dissipated and the means of livelihood of those employed by plaintiff will be taken away and plaintiff will suffer great and irreparable damage in the destruction of its said bill-boards, its entire plant will be rendered valueless and it will be unable to comply with and perform the terms of its said contracts, entered into with its several customers, and its entire business will be a total loss; it being for the several reasons herein stated absolutely impossible for it to remain in business and comply with the terms of said illegal, unreasonable and oppressive ordinances, and that plaintiff has no adequate remedy at law.

XV.

Inasmuch, therefore, as plaintiff is without remedy in the premises, except in a court of equity, and to the end that the City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings of the City of St. Louis, and William Young, Chief of Police of the City of St. Louis, who are made parties defendant hereto, may each be required to make full, true and perfect answer hereto, but not under oath, answer under oath being hereby waived, that this Court may inquire into, investigate and ascertain the truth of the allegations herein contained; and plaintiff prays that upon the hearing hereof this Court may find and decree that each of the sections of said ordinances, hereinbefore set forth, are null, void, unconstitutional and of no effect; that the City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings of said City of St. Louis, and
46 William Young, Chief of Police of said City of St. Louis, and the officers, attorneys, agents and servants, and each of them, may be forever restrained and enjoined from in any way interfering with, preventing the erection, repair or reconstruction of, removing, damaging or destroying the said bill-boards and signs of plaintiff, and from interfering with the maintenance by plaintiff of said bill-boards and signs, or any of them, in a safe and permanent condition, and that plaintiff may have such other and further relief in the premises as the nature of its cause may require and as to this Court shall seem meet and proper.

M. C. EARLY,
Attorney for Plaintiff.

STATE OF MISSOURI,
City of St. Louis, ss:

J. H. Brinkmeyer, being duly sworn, deposes and says that he is the acting president, agent and secretary of St. Louis Poster Advertising Company, the above-named plaintiff; that he has read the foregoing bill of complaint and knows the contents thereof and that

the same is true, of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

J. H. BRINKMEYER.

Sworn to and subscribed before me this 21st day of March, 1914. My term expires February 17, 1916.

[SEAL.] MYRTLE B. WOOD,
Notary Public, City of St. Louis.

17 On April 15, 1914, at the said April Term of said court, the defendants filed a demurrer to said petition in words and figures as follows:

Demurrer to Petition.

Now come the defendants in the above-entitled cause, and demur to the petition of plaintiff herein, and for grounds of demurrer said defendants state:

1. That the petition fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against defendants, and fails to state facts sufficient to entitle plaintiff to relief prayed for, or to any relief.

2. That the petition is wholly without equity.

3. That said petition raises but one question, namely, the validity of the ordinances of the City of St. Louis set out in said petition, which said ordinances have been declared valid by the Supreme Court of the State of Missouri in the case of The St. Louis Gunning Advertising Company v. The City of St. Louis, 235 Mo. 99, and upon the principle of stare decisis the validity of said ordinances is not now open to question in this court.

WM. E. BAIRD,
TRUMAN P. YOUNG,
Attorneys for Defendants.

On April 27, 1914, at the same term of said court, said demurrer to plaintiff's petition was by order of the Court duly entered of record, sustained; to which order and ruling of the Court plaintiff then and there duly excepted at the time and saved its exception.

On May 1, 1914, at the same, April Term, 1914, of said court, plaintiff, in writing, duly filed in open court, declined to
18 plead further, whereupon judgment was by the Court duly entered of record in words and figures as follows:

Judgment.

Now at this day, it appearing to the Court that the demurrer filed by the defendants to the plaintiff's petition in the above-entitled cause was by the Court sustained on the 27th day of April, 1914, and the plaintiff now here in open court declining to plead further, it is ordered by the Court that final judgment be rendered on said demurrer in favor of the defendants; and it is therefore considered and adjudged

by the Court that the plaintiff take nothing by its suit in this behalf, but that its bill herein be, and the same is, hereby dismissed, and that the defendants go hence without day and recover of plaintiff the costs of this proceeding, and have therefor execution.

Thereupon plaintiff files and presents to the Court an affidavit for appeal and prays an appeal in the above-entitled cause, and the Court having seen and examined said affidavit, doth order that an appeal be, and is, hereby allowed plaintiff to the Supreme Court of the State of Missouri from the Judgment or decision of the Court this day rendered.

And on said May 1, 1914, at the same April Term, of said court, plaintiff deposited $10 docket fee with the clerk of said court and filed its application and affidavit for an appeal to the Supreme Court of Missouri, as follows:

19 STATE OF MISSOURI,
City of St. Louis, ss:

In the Circuit Court, City of St. Louis, April Term, 1914.

ST. LOUIS POSTER ADVERTISING COMPANY, a Corporation, Plaintiff,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Affidavit for Appeal.

STATE OF MISSOURI,
City of St. Louis, ss:

J. H. Brinkmeyer, as president and agent for and in behalf of St. Louis Poster Advertising Company, the above-named plaintiff, being duly sworn, makes oath and says, that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the Court.

J. H. BRINKMEYER,
Its President and Agent, for and in Behalf of the Above-named Plaintiff.

Subscribed and sworn to before me this 1st day of May, A. D. 1914.

[SEAL.] CHAS. R. GRAVES, *Clerk.*

Which was by order of Court duly made and entered of record on that day allowed to said Supreme Court of Missouri.

Respectfully submitted,

MARION C. EARLY,
Attorney for Appellant.

(Here follow diagram and photographs marked pages 50*a* to 50*i*, inclusive.)

MAPS

TOO

LARGE

FOR

FILMING

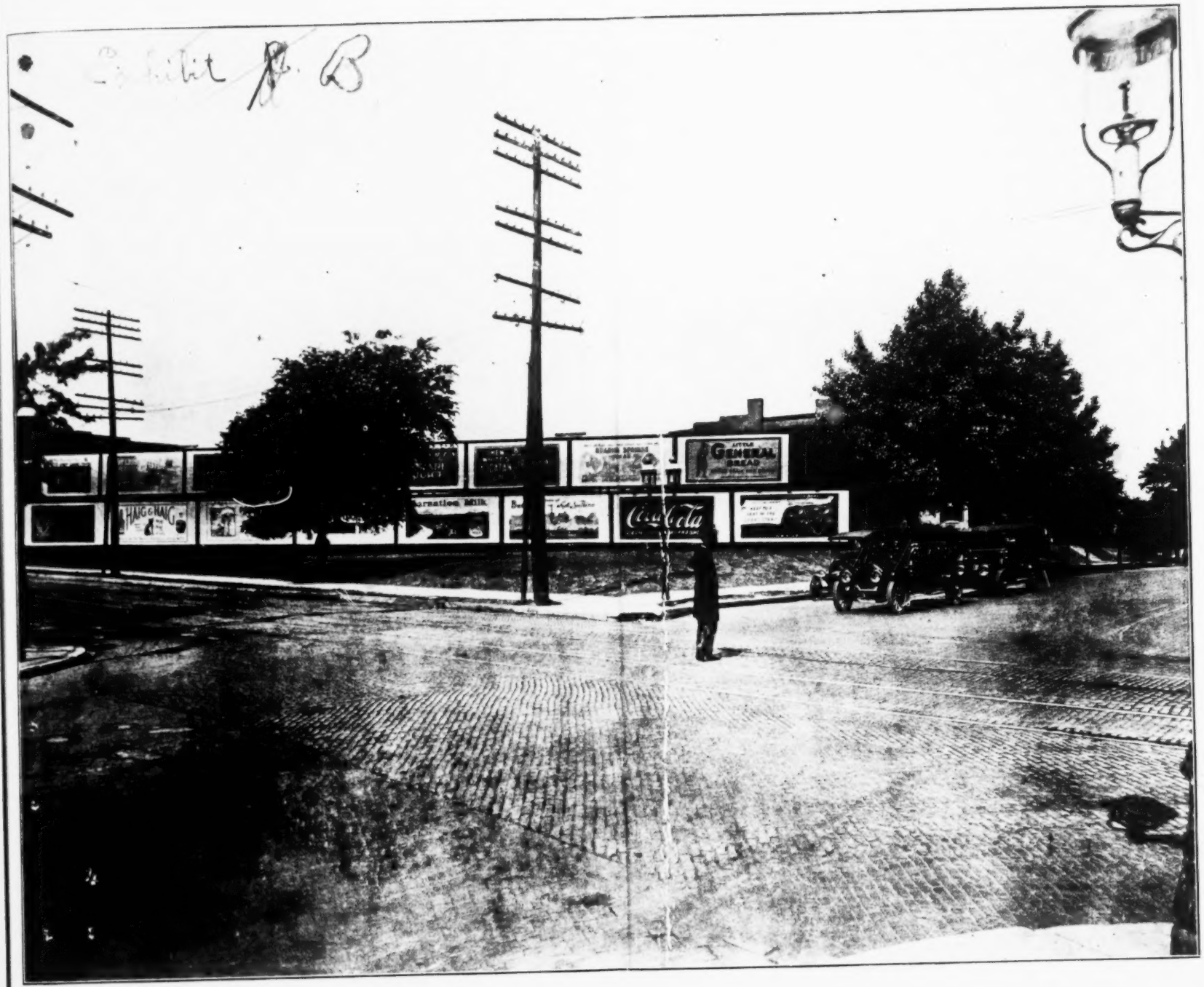


Exhibit B
LITTLE GENERAL BREAD
Coca-Cola

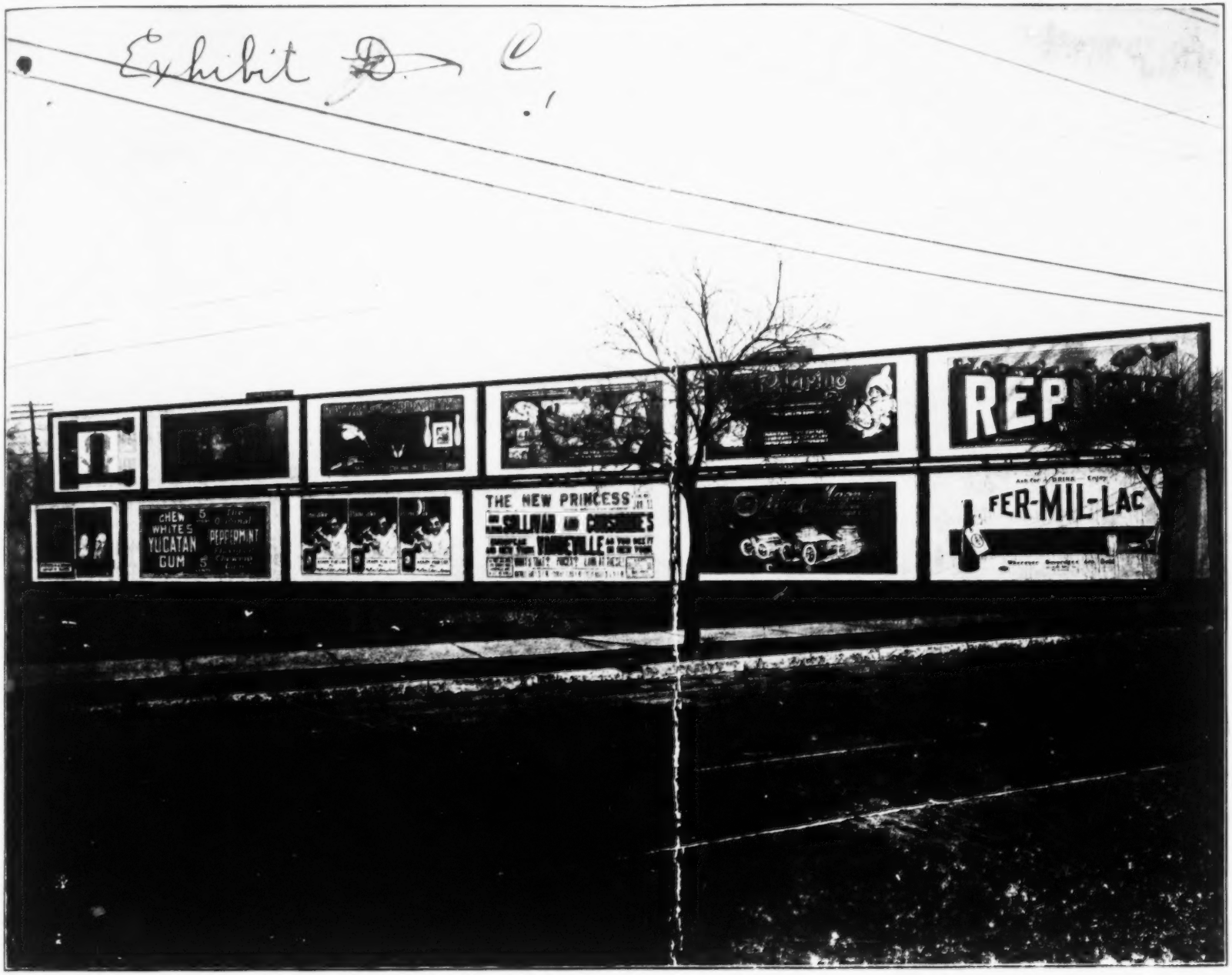


Exhibit D → C
REP
CHEW WHITES YUCATAN PEPPERMINT GUM
THE NEW PRINCESS
FER-MIL-LAC

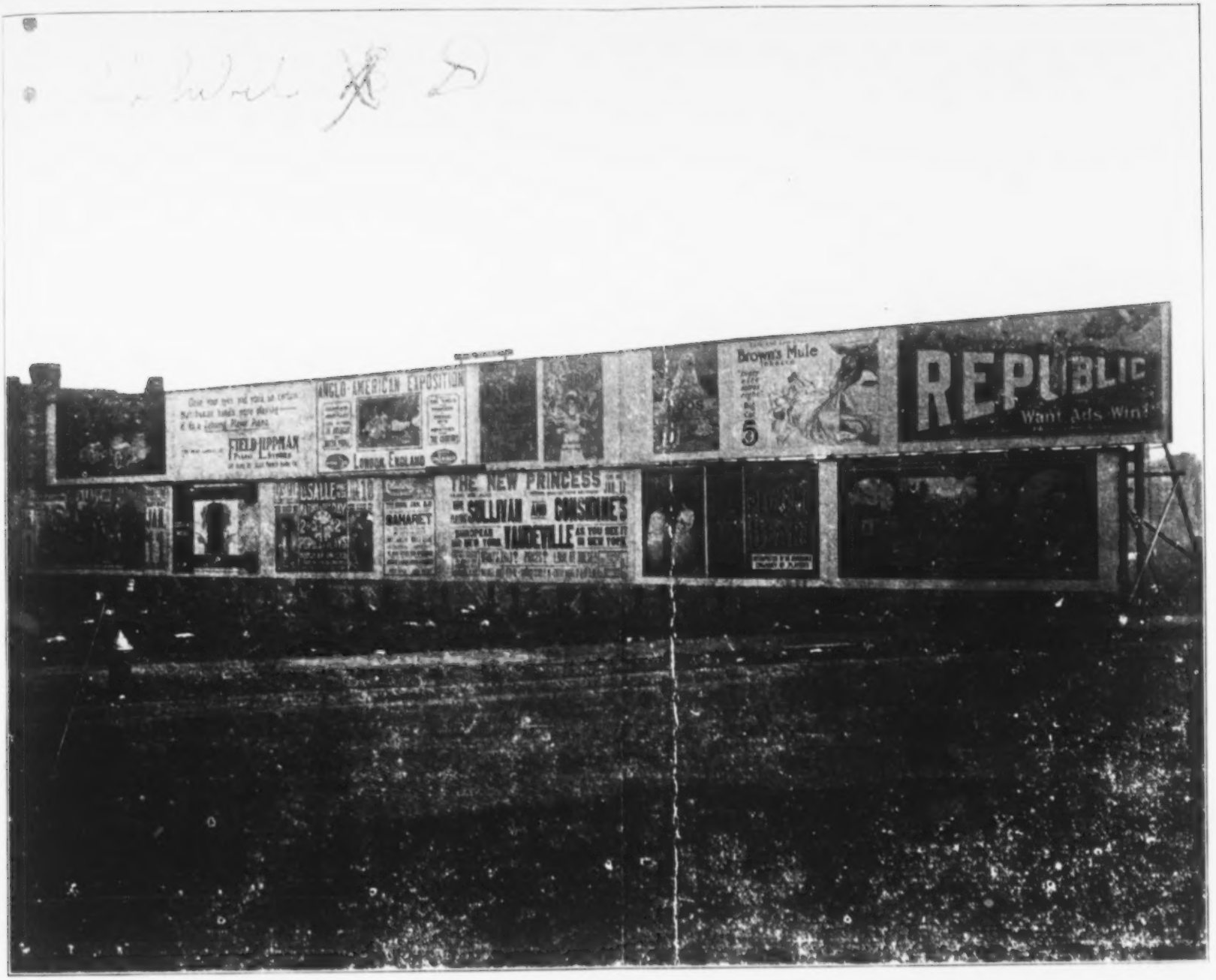

ANGLO-AMERICAN EXPOSITION
LONDON, ENGLAND
FIELD LIPPMAN
Brown's Mule
REPUBLIC
Want Ads Win!
THE NEW PRINCESS
SULLIVAN AND CONSIDINE'S
VAUDEVILLE
CABARET

Exhibit E

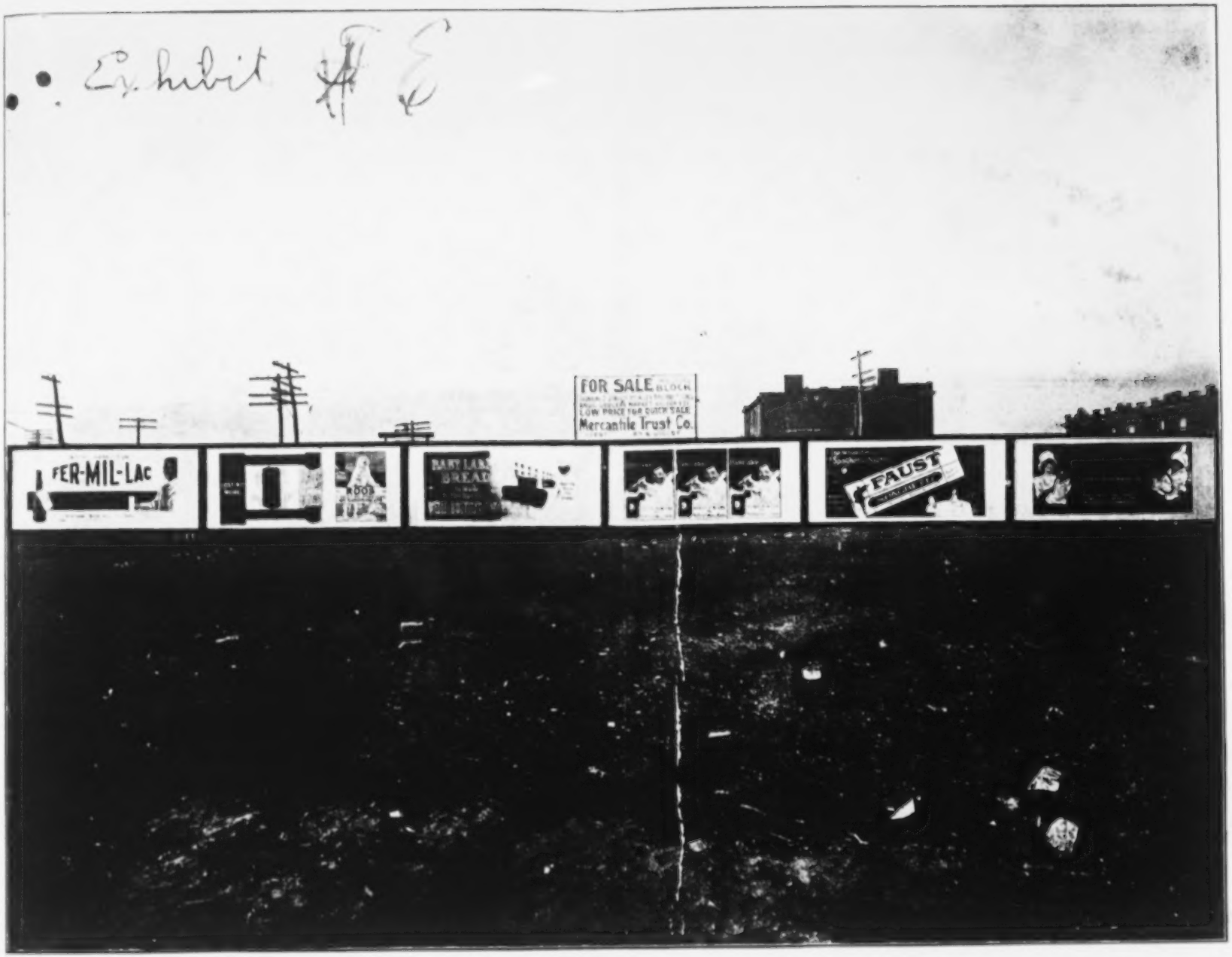
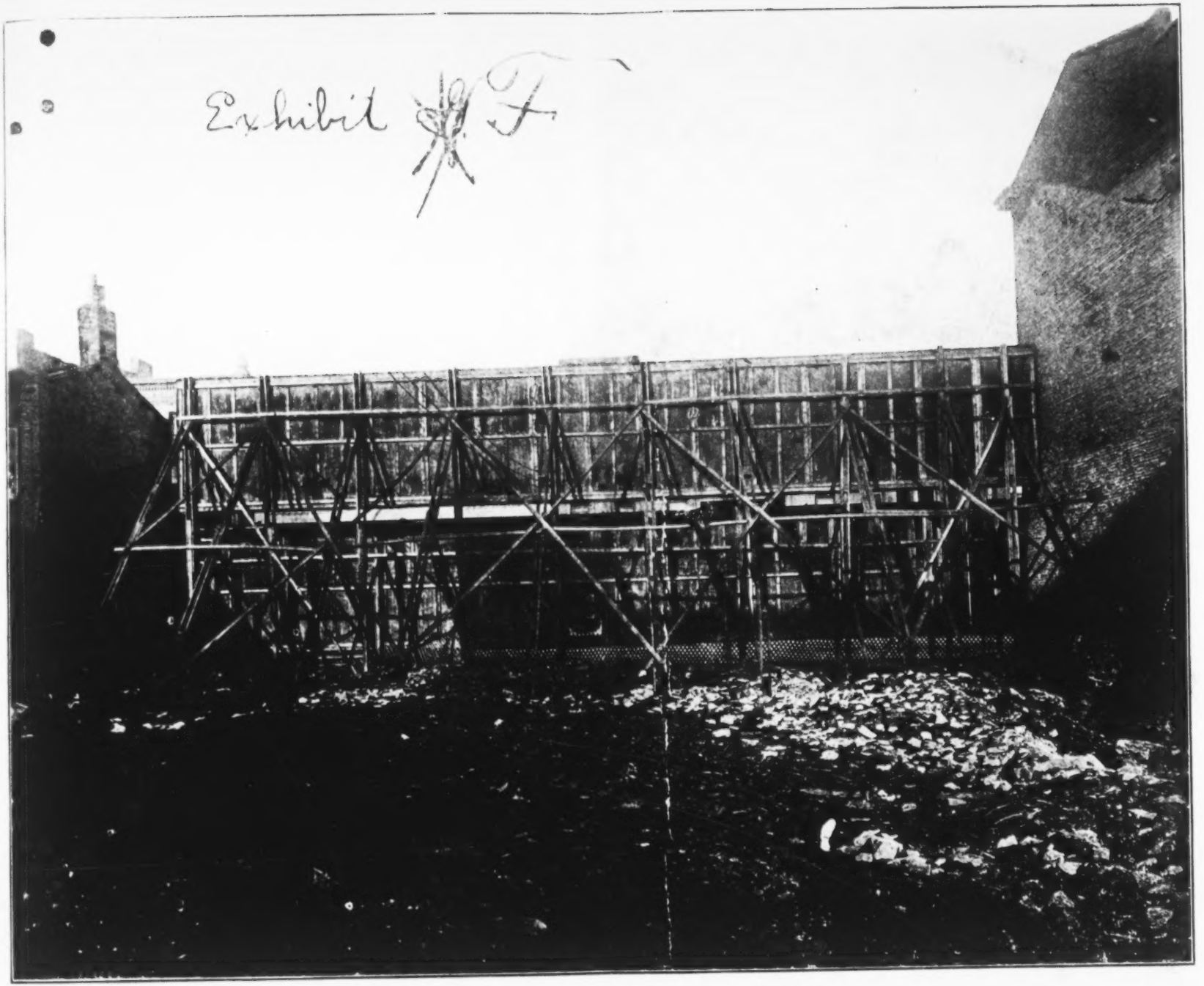
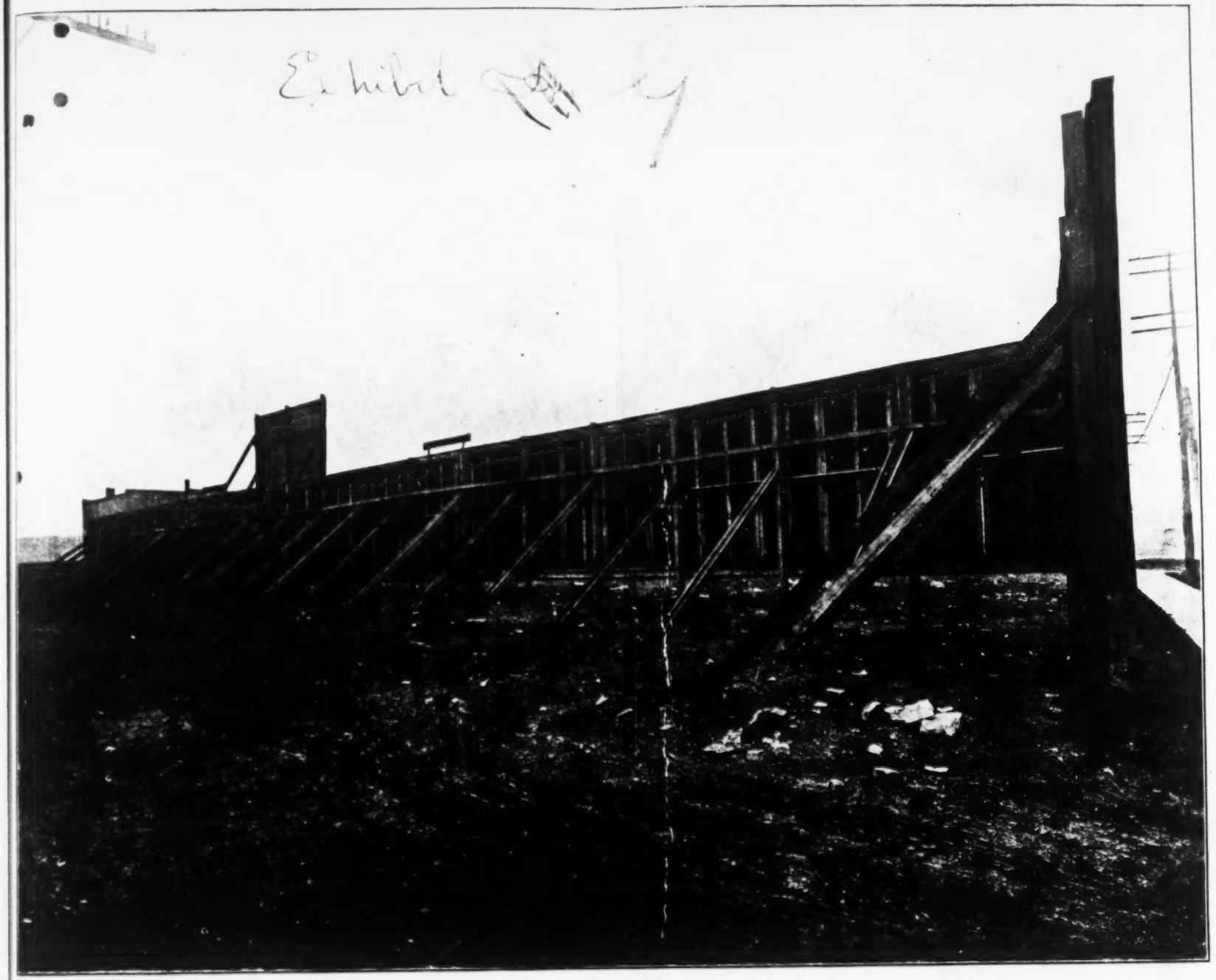

FOR SALE BLOCK
LOW PRICE FOR QUICK SALE
Mercantile Trust Co.
FER-MIL-LAC
BABY LAX BREAD
FAUST

Exhibit F.





Exhibit

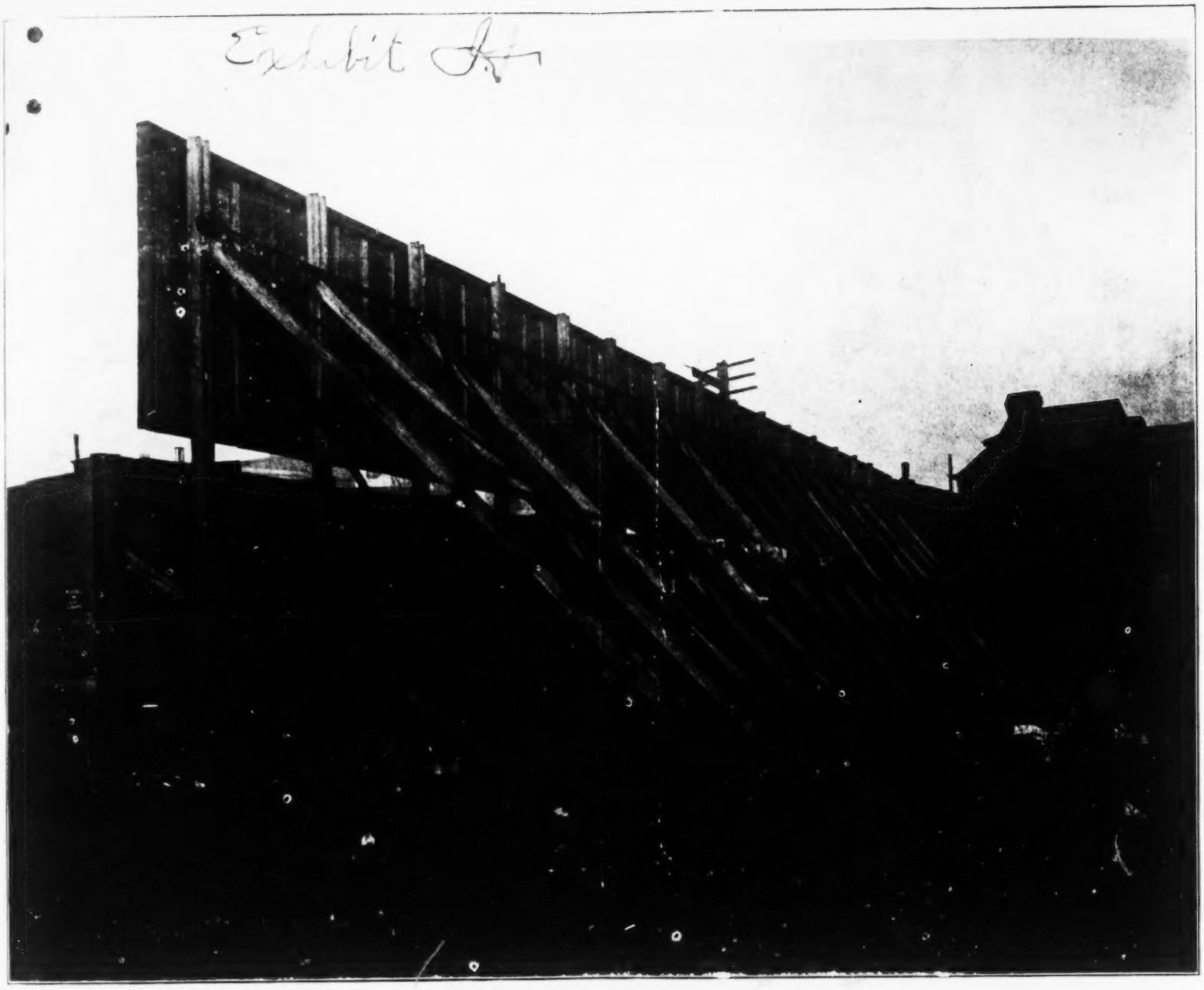
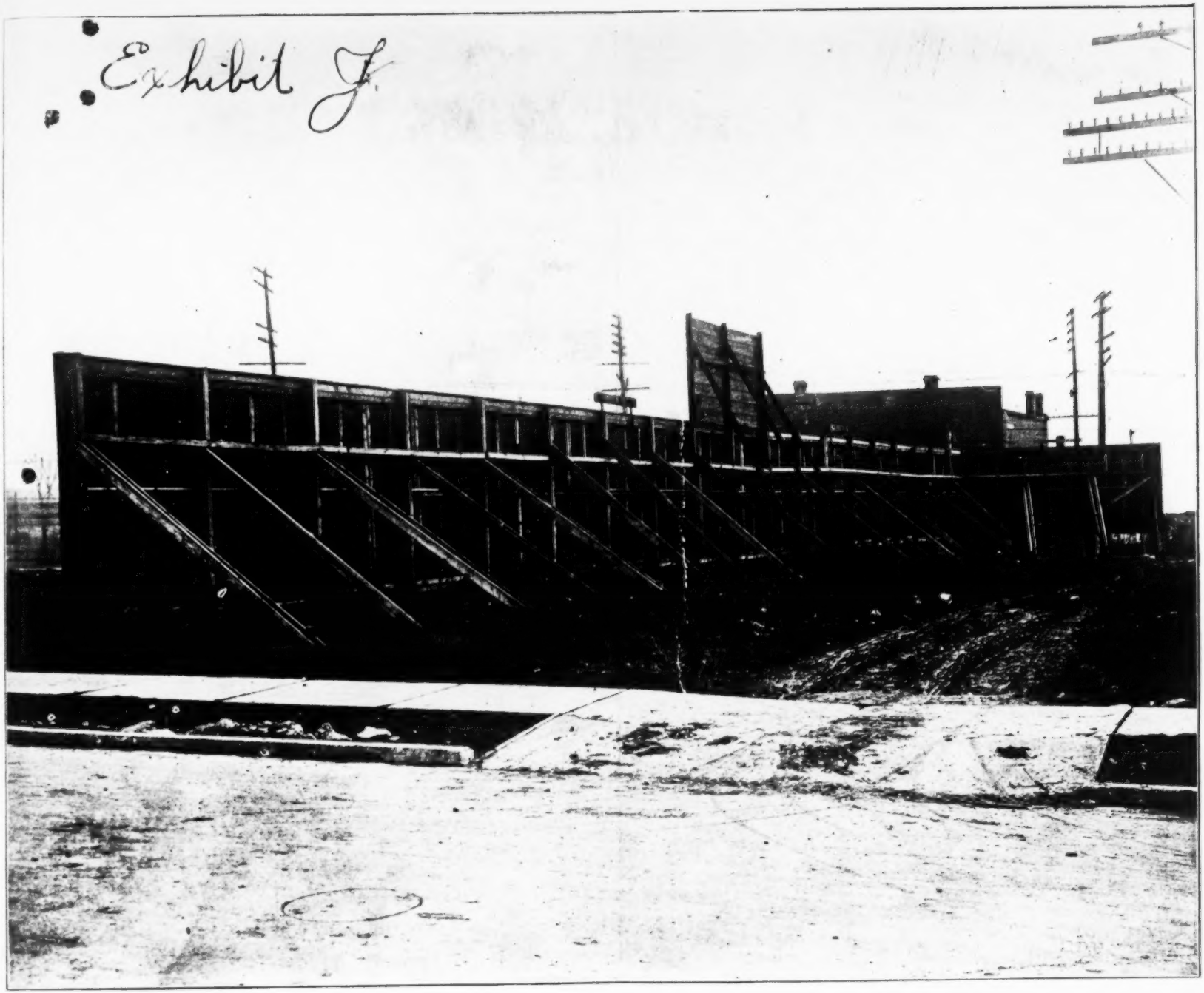


Exhibit A

Exhibit F.



51 And thereafter, to-wit, on the 9th day of May, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Court in Banc, April Term, 1917.

No. 18441.

St. Louis Poster Advertising Company, Appellant,

vs.

City of St. Louis et al., Respondents.

Come now the said parties by their attorneys, and after arguments herein, submit this cause to the Court.

And thereafter, to-wit, on the 22nd day of May, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

St. Louis Poster Advertising Company, Appellant,

vs.

City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

Appeal from the Circuit Court, City of St. Louis.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said Respondents recover against the said Appellant their costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to-wit;

52 In the Supreme Court of Missouri, in Banc, April Term, 1917.

No. 18411.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

Appeal from the Circuit Court for the City of St. Louis.

The petition was filed March 21, 1914. It asked for injunction to restrain the city of St. Louis and its codefendants Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police of said city, from enforcing certain ordinances with relation to the construction and maintenance of bill-boards. The petition states, in substance, that the plaintiff was incorporated under the laws of the state of Missouri on February 1, 1894, and has ever since been engaged as such corporation in the business of bill posting and advertising in the city of St. Louis, in the prosecution of which business it has procured at great expense leases of lots on which to erect such bill-boards for terms running from three to five years, has erected bill-boards thereon at an expense approximating $100,000.00 and has entered into many contracts for the display of advertising matter on said boards for periods extending from six months to three years, and that its income is derived solely from the payments made by customers for such services. That in the construction and maintenance of such bill-boards it has always complied with the laws of the state and
53 valid ordinances of the city, constructing them in a substantial, permanent, safe, workmanlike and sanitary manner, so that they will stand a wind pressure of thirty pounds to the square foot, corresponding to a wind velocity of eighty-three miles per hour, which is greater than the highest velocity of record in said city, so that their resistance is equal to the standard required for the tallest office buildings; that they are fire proof, and that it has never lost a bill-board by fire nor has one of them been blown down by the wind; that no fire or tornado insurance is carried thereon and that they are in numerous instances equipped with electric wires and lighted by electricity, and are kept in a permanent, safe, substantial, workmanlike and sanitary condition, and it has never been charged by officials of the city that any of them are a nuisance or a menace or detriment to the public welfare, morals or safety of the city or any of its inhabitants, and that the service rendered by plaintiff has become a commercial necessity to many doing lawful business in said city; and that none of them are situated upon public property.

The plaintiff further states that the business of manufacturing posters for display on these boards has reached enormous propor-

tions in this and foreign countries, employing vast capital, and large numbers of persons depend upon it for support. That the size of these posters *have* been standardized, so that they require for their display a surface not less than ten and one half feet in height and from nine to seventy feet in length, and that the equipment for the manufacture of commercial and theatrical posters is adapted to the production of such standard size, and cannot be changed without great initial expense and loss; so that if plaintiff cannot display these standard sizes the larger portion of the income from its business will be destroyed.

The petition then states that on April 7, 1897, the city passed an ordinance providing that no bill-board should be erected in
54 the city without a permit from the building commissioner upon a plan to be approved by him for which a fee of one dollar for each twenty-five feet or fraction thereof must be paid, and that within the fire limits no board more than fourteen feet high should be erected, and that all bill-boards should have at least two feet of clear space from the lower edge of the board to the ground.

That on April 7, 1905, another ordinance number 22022 was passed purporting to revise the building code of the city, by which the ordinance of 1897 was repealed. It provided that the construction, erection, repairing and altering or removing of buildings should thereafter be in conformity with its provisions, and that nothing therein should be considered to prevent the completion of any building operations for which permits were in force at the time of its approval, in accordance with the terms of the ordinance in force at the time of the issue of such permit. The fee for such permit for the erection or altering of buildings was fixed at one dollar if the estimated cost of such work should be less than $1,000.00 and the further sum of fifty cents for each additional $1,000.00. For permits for the removal of buildings the fee was fixed at one dollar for buildings covering an area of twenty-five hundred square feet or less, and fifty cents for each additional twenty-five hundred feet or fraction thereof.

Section 81 of this ordinance provides that the fee to be charged for a permit to erect signs upon buildings shall be at the rate of one dollar for every twenty-five square feet of the area of such signs, and the fee for a permit to erect bill-boards should be at the rate of one dollar for every five lineal feet thereof, and fee for a permit to erect or install any heating or power apparatus should be one dollar.

Section 177 provides that no bill-board of twenty-five square feet or more shall be erected, altered, replaced or reconstructed without a permit, and that the manner of construction location and dimensions thereof shall be subject to the approval of the building
55 commissioner and that no bill-board shall extend more than fourteen feet high above the ground, and that all the bill-boards shall have an open space of four feet between the lower edge and the ground which shall not be closed in any manner, and that no bill-boards shall approach nearer than six feet to any building nor to the side of any lot, or shall be nearer than two feet to any other bill-board or shall exceed five hundred square feet in area, nor

approach the street line of any street, alley or right of way on which any lot fronts or abuts nearer than fifteen feet; and that where the building line within fifty feet of the bill-board is more than fifteen feet from the street or boundary line the bill-board must be kept within the building line; and that where buildings are afterward built near bill-boards the latter shall be moved or cut to have a space of six feet between the building and the bill-board. That "any bill-board which now is or hereafter becomes unsafe, and any which may hereafter be erected or altered contrary to this section, shall be removed by the owner of the board or of the property on which it stands" upon notice specified, within three days after service of such notice shall be made by delivery to the owner, or posting upon the offending structure, or mailing to the owner's personal or business address either within or without the city. The petition states the objections to the validity of the ordinance as follows:

"1. The City of St. Louis has no authority or power in law to make the regulations contained in said ordinances, and has no power or authority to deprive the owners and lessees of private property of the unrestricted, free and reasonable use thereof, as by the said ordinances is attempted to be done.

"2. The provisions of said ordinances are unreasonable, unjust and oppressive, and go far beyond any regulations necessary for the protection of the lives, morals and property of the inhabitants of the City of St. Louis.

56 "3. Said ordinances are not uniform in their operation upon all classes to which they apply, but discriminate against structures erected for advertising purposes, and discriminate against them merely because they are erected for advertising purposes.

"4. Said ordinances undertake to force the same limitations and regulations upon advertising structures or bill-boards in the open and unsettled part of the City as in the downtown and thickly settled sections.

"5. Said ordinances, as interpreted and threatened to be enforced by the Commissioner of Public Buildings, prohibit plaintiff from making reasonable and necessary repairs on the signs and bill-boards heretofore by it erected, and thus will prevent it from relieving itself from great loss and from prospective liability for damages which might arise by reason of injuries caused by boards that become unsafe.

"6. Said ordinances, if and as threatened to be enforced, would deprive the owners and lessees of private property within the limits of the City of St. Louis, and especially this plaintiff, of the lawful and reasonable use of that part of said property which lies within fifteen feet of any public street or within six feet of any building, without any necessity therefor and without any compensation whatever.

"7. That said ordinances arbitrarily, oppressively and unreasonably limit the height and size of bill-boards, without regard to the location or the surrounding conditions.

"8. Said ordinances attempt to prescribe an unjust unreasonable and oppressive fee to be paid for permits to erect signs and bill-

boards within the City of St. Louis, without any reason therefor, and said fees are far in excess of and more than five hundred times greater than the fees charged for similar permits for any
57 other structures or buildings, involving as much and greater service by the officers of the city.

"9. Said ordinances attempt to prescribe the kind of material out of which signs of certain dimensions shall be constructed, without regard to the requirements of the location and surroundings of said signs.

"10. Said ordinances are designed to and do discriminate against the lawful business in which plaintiff is engaged, and were designed to and ultimately will deprive plaintiff, and all others engaged in the same business, of their present plants, and will drive them entirely out of business in the City of St. Louis.

"11. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that they deprive plaintiff and the owners, lessees and occupants of its and their property, by imposing an unnecessary and unreasonable limitation upon plaintiff's business and upon the use of lands and property in the City of St. Louis for the construction and maintenance of bill-boards and structures for the display of poster advertisements.

"12. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they constitute a taking of the property of plaintiff, and of the owners, lessees and occupants of lands in the City of St. Louis, for an alleged public use without just compensation.

"13. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that the limitation which they impose upon the use of real property of plaintiff and others in the City of St. Louis constitutes the taking of private property for a use which is not public and without just compensation.

"14. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the
58 United States by denying to plaintiff, and to the aforesaid owners, lessees and occupants of lands in the City of St. Louis, the equal protection of the laws of the State of Missouri, and that they violate the same section by abridging the privileges and immunities of plaintiff and the aforesaid owners, lessees and occupants, being individuals and citizens of the United States.

"15. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff of the right of carrying on the lawful business of displaying advertisements upon its boards, so constructed on private property as not to endanger the safety of the public; and also in that said ordinances violate the same provisions by depriving plaintiff and the owners, lessees and occupants of lands in the City of St. Louis of the right and privilege to use and derive profit from the erection and maintenance upon such lands of bill-boards so constructed as not to endanger the safety of the public, although ex-

ceeding in dimensions the limitations attempted to be imposed by said ordinances.

"16. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff and the owners, lessees and occupants of land within the City of St. Louis of their liberty without due process of law, to-wit, the liberty of maintaining, erecting and displaying and permitting to be maintained, erected and displayed bill-boards, so constructed as not to endanger the safety of the public, although exceeding in dimensions, and otherwise, the limitations attempted to be imposed by the aforesaid ordinances, thus depriving plaintiff of the liberty to carry on a lawful business, without unreasonable restrictions, and depriving the said owners, lessees and occupants of the liberty of making a beneficial and profitable use of their property.

"17. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States
59 in that they deprive plaintiff of its property without due process of law and without just compensation.

"18. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States, in that said ordinances were not intended to regulate the construction and maintenance of bill-boards in the City of St. Louis, nor to impose reasonable restrictions on the construction thereof, in the exercise of the police power of the city, but to destroy the property of plaintiff and deprive it of the use thereof without just compensation.

"19. Because said ordinances violate Article III, Section 26, paragraph 14, of the Charter of the City of St. Louis, in that they do not encourage or maintain the good government of the city, its trade, commerce or manufacture, but are inconsistent with the laws and Constitution of the State of Missouri; and the broad grant of police power under said Article III, Section 26, paragraph 14, cannot confer upon the City of St. Louis any power not in harmony with the Constitution and laws of Missouri, as expressly provided in Article IX, Section 23.

"20. Because said ordinances violate the provisions of Article II (known as the Bill of Rights), Section 30, of the Constitution of the State of Missouri, in that they constitute a taking of the property of plaintiff without due process of law.

"21. That the provisions of said pretended ordinance amount to the taking of the property of plaintiff for an alleged public use without just or any compensation, in violation of Section 21 of Article II of the Constitution of Missouri.

"22. That said pretended ordinance, if enforced, will be retrospective in its operation and will deprive plaintiff of its property lawfully acquired prior to the passage of said pretended ordinance, in violation of Section 15 of Article II of the Constitution of Missouri."

It states that a large number of said bill-boards had been
60 erected in conformity with ordinances under permits and licenses issued by the duly constituted authority of the City

for which it has paid large sums of money and in each and every instance of the erection of new bill-boards, or the repairing of others, the plaintiff has tendered to the city through its proper officers and agents the fees required by the valid ordinances of the city and no erection or repairs have been made except with notice to and under the immediate observation of the city and that they are all now in good repair and in a thoroughly safe condition.

That notwithstanding this the defendants have issued to and served on plaintiff the following notice in writing:

"City of St. Louis, Mo.,

Jan. 23, 1914.

To St. Louis Poster Adv. Co., Greeting:

"Take Notice that a certain bill-board having a surface of more than twenty-five square feet, erected by you and which you are now maintaining on a certain parcel of ground, owned by Frank A. Ruf, known as lot number as below in city block number 3924, and in the City of St. Louis, has been examined by this department and found to have been erected by you in direct violation of Section Four Hundred and Ninety-eight of the Revised Code of 1912, of the City of St. Louis, in the following respects, namely, that said bill-board was erected without a permit from this department and without its approval; that said bill-board exceeds 500 square feet in area; extreme height above the ground exceeds 14 feet; has a space of less than 4 feet between lower edge of board and ground; is less than 15 feet distant from nearest street and less than 6 feet distant from nearest building. (Lot situated at the S. E. corner of Sarah and Olive streets, and having a frontage of 152 feet, more or less, on the south line of Olive street.)

"Wherefore, acting under and by virtue of authority in
61 me vested, by Section Four Hundred and Ninety-eight and Five Hundred of the Revised Code of 1912, of the City of St. Louis, I hereby command you to remove the said bill-board from the said lot of ground within three days, next, immediately after the service of this notice upon you, or that you take down said bill-board within three days, and if you desire to maintain a bill-board on said lot, procure a permit from this department to re-erect same or to so change or alter said bill-board as to location or manner of construction, or both, as will cause it to fully comply with all of the requirements of Section Four Hundred and Ninety-eight of said Revised Code, a copy of which is hereto attached and made a part hereof.

"Respectfully,

"J. N. McKELVEY,
"Commissioner of Public Buildings."

The petition further states, in substance, that if the said ordinance shall be enforced it will put appellant out of business by destroying its ability to accept and perform a large proportion of the business

offered it, by making its leases worthless and would amount to a destruction of the entire property acquired and used by it in the prosecution of the objects for which it is incorporated. That the building commissioner has a large force of men engaged in the work of tearing down and destroying plaintiff's said property, and threatens to proceed with said work until all its bill-boards are destroyed; that plaintiff has forbidden the defendants and each of them to continue said work but they refuse to discontinue it and threaten and declare that they will arrest plaintiff's officers and agents if they attempt to resist or interfere with the destruction of said property; that unless they are restrained by injunction from proceeding with said work and enforcing against plaintiff the provisions
62 of said pretended ordinance its business will be irretrievably ruined and all its property torn down and destroyed, its profits dissipated and the means of livelihood of its employees taken away, and its ability to perform its contracts be destroyed so that its whole plant and business will be a total loss to its irreparable injury etc., and closes with a prayer for injunction. To this petition the defendants filed a demurrer which, omitting the caption and signature, is in words and figures following.

"Now come the defendants in the above-entitled cause, and demur to the petition of plaintiff herein, and for grounds of demurrer said defendants state:

"1. That the petition fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against defendants, and fails to state facts sufficient to entitle plaintiff to relief prayed for, or to any relief.

"2. That the petition is wholly without equity.

"3. That said petition raises but one question, namely, the validity of the ordinances of the City of St. Louis set out in petition, which said ordinances have been declared valid by the Supreme Court of the State of Missouri in the case of The St. Louis Gunning Advertising Company vs. The City of St. Louis, 235 Mo. 99, and upon the principle of stare decisis the validity of said ordinance is not now open to question in this court."

The demurrer was sustained and the plaintiff, declining to plead further judgment was rendered dismissing the bill, from which this appeal is properly taken.

Opinion.

1. It is suggested by the appellant in argument that the fee fixed by the City of St. Louis for license to construct bill-boards is unjust and unreasonable in itself and unlawfully discriminative against it and the business in which it is engaged, because it is many times greater in amount than the fees charged for permission to
63 erect other similar structures. This question does not seem to be well raised by the bill, in which the pleader contents himself by stating that the plaintiff tendered the amount required by the valid ordinances of the city, without mentioning either the amount tendered or the valid ordinances to which it refers. Al-

though he impliedly admits that the amount fixed by the ordinances which he attacks was not paid, he states that the plants were submitted to the city, and the boards constructed with its knowledge and under its observation. Although the notice to remove them is fully pleaded, we find nothing in it equivalent to the assertion of the right to demolish a lawful structure, fully and openly completed under an honest claim of right for the sole reason that the fee had not been paid nor the permit issued. We do not feel called upon to determine a point which the appellant does not think it worth while to present in its pleadings.

2. The case went off upon demurrer consisting of two paragraphs. The first is in the ordinary form of a general demurrer, and the second invokes the doctrine stare decisis in the decision of this court En Banc in the case of St. Louis Gunning Company vs. St. Louis, 235 Mo., 99, in which the validity of the same ordinance under which this case has arisen was passed upon and upheld. We do not think this last ground is properly made by demurrer; but waiving this objection we are of the opinion that however persuasive the decision of that case may be, it does not constitute a bar to this action by a different plaintiff who is here with his own facts, urging that in so far as the Gunning case conflicts with its own contention it should be reviewed. The respondents, as to the conclusiveness of that adjudication against the appellant, cite the following authorities: Long vs. Long, 79 Mo. 644; St. Louis R. Co. vs. Southern Ry. Co., 138 Mo., 591; Wilson vs. Beckwith, 140 Mo., 359; Schoenberg vs. Heyer, 91 Mo., App. 389. In one of them, Long vs. Long, the court states the true principle as follows: "The proper limitation to the doctrine of stare decisis is, that when they can be used
64 only as instruments of wrong and destruction error ceases to be sacred, and principles and truth ought to be re-asserted."

3. The real question raised by this appeal relates to the reasonableness and consequent validity of an ordinance of the city of St. Louis which provides in effect that every board erected or maintained in the city of St. Louis shall conform to the following specifications: (1) that it shall not exceed 500 square feet in area; (2) that it shall not exceed the extreme hight of fourteen feet above the ground; (3) that they have a space of at least four feet between the lower edge of the board and the ground; (4) that it shall not be less than fifteen feet distant from the nearest street; (5) that it shall not be less than six feet distant from the nearest building.

This question is raised upon a petition in equity by which the appellant seeks to enjoin the threatened destruction by the defendant city and its officers of certain bill-boards which conflict, in their construction, with each of the above specifications. The appellant contends that in each of these particulars the ordinance is unreasonable, in that it unnecessarily and arbitrarily interferes with and obstructs the plaintiff in the prosecution of a lawful business and in the use and enjoyment of its property in the defendant city, is beyond the scope of the powers conferred upon the city by the constitution and laws of this state which constitute its charter, and in so far as it may have been attempted to include it within its charter powers violates those

familiar guaranties of the Constitution of the United States and of the state of Missouri designed for the protection of the owners of private property in its ownerships and beneficial use against the arbitrary action of the legislature. In support of this contention the appellant states that his bill-boards are absolutely safe in construction, that the business to which they are devoted is as legitimate and beneficial to the general public as other commercial enterprises; that their existence and maintenance contravene no right of
65 the public to the occupation or use of the land on which they are situated; that the unnecessary limitation of the size of its structures would deprive it of the greater part of the revenue it would otherwise earn, and that their limitation with reference to their position deprives him of the use of the land from which he would otherwise receive legitimate revenues, without compensation.

All these matters were before this court in St. Louis Gunning Company vs. St. Louis, 235 Mo., 99. In that case the matter decided is fairly stated in a syllabus as follows: "An ordinance declaring that no bill-board hereafter erected, altered, refaced or reconstructed shall exceed fourteen feet in height above the ground, and every such bill-board shall have an open space of at least four feet between the lower edge and the ground, which space shall not be closed in any manner while the bill-board stands; nor shall any such bill-board approach nearer than six feet to any building, nor to the side line of any lot, nor nearer than two feet of any other bill-board, nor shall any such bill-board exceed five hundred square feet in area, nor approach the street line of any street on which any lot fronts nearer than fifteen feet; and where buildings are hereafter built near or adjacent to bill-boards such bill-boards shall be so moved or cut off as to leave a space of not less than six feet between the building and such bill-board, is a reasonable police regulation, in the interest of the public health, safety, peace and morals."

That decision was by the court En Banc, where, if it is to be reconsidered, such reconsideration should be had. It follows that upon the authority of that case the judgment of the circuit court in this case must be affirmed.

STEPHEN S. BROWN,
Commissioner.

Per CURIAM:

The foregoing opinion of Brown, Commissioner, in Division No. 1, is adopted by the Court in Banc as the opinion of said Court. All concur, except Graves, C. J., who dissents for the reasons expressed in the dissenting opinion in St. Louis Gunning Co. v. St. Louis, 235 Mo., l. c. 207, et seq.

66 And thereafter, to-wit, on the 30th day of May, 1917, the following further proceedings were had and entered of record in said cause:

No. 18441.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS et al., Respondents.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, to-wit:

67 In the Supreme Court of the State of Missouri, in Banc.

No. 18441.

ST. LOUIS POSTER ADVERTISING COMPANY, a Corporation, Appellant,

vs.

CITY OF ST. LOUIS et al., Respondents.

Appellant's Motion for Rehearing.

Now comes the appellant in the above entitled cause and files this its motion for a rehearing in said cause and as reasons for a reconsideration thereof, states that matters and questions decisive of the cause, and duly submitted by counsel, have been overlooked by the Court, as follows:

1. In the opinion in this case, at the bottom of page 13 and top of page 14 of the typewritten opinion, the Court says: "In support of this contention the appellant states that his bill-boards are absolutely safe in construction. * * * All these matters were before the Court in St. Louis Gunning Co. vs. St. Louis, 235 Mo. 99." whereas, in the Gunning case, the bill-boards were not "absolutely safe in construction," but to the contrary thereof, they were highly unsafe in construction. See Appellant's Brief, pp. 66 and 67.

2. Appellant presented in his brief the proposition that restriction of erection of bill-boards to fifteen feet from sidewalks could only be justified as protection against injury to passersby by blowing down of *flying* structures (St. Louis Gunning Co. v. St. Louis, 235 Mo. 152); and that the structures in question are safe
68 (Brief, pp. 22-32). To which proposition no reference is made in the decision.

3. Appellant argued that under the facts of this case, there was no justification for the particular restriction placed on the height of bill-boards (Brief, pp. 32-34), to which point no reference is made in the decision.

4. Appellant argued that under the facts of this case, there is

no danger from fire to justify exercise of the police power (Brief, pp. 34-35), to which point no reference is made in the decision.

5. Appellant argued that under the facts of this case, there was no danger to public health or morals such as would warrant exercise of the police power (Brief, pp. 35-38), to which point no reference is made in the decision.

6. Appellant argued that the ordinances as a whole were not only in exercise of police power, but were a "carefully prepared design to exterminate the business by arbitrary license fees and taxes." (Brief, pp. 38-46), to which point no reference is made in said decision.

7. The Court in refusing to pass on the validity of the fee imposed for erecting bill-boards on the ground that the pleading failed to raise that point, omitted to notice that it is fairly inferable from the petition that the Building Commissioner of the City of St. Louis refused on request to issue permits for the construction of bill-boards to plaintiff, unless it tendered the amount of the fee required by this challenged ordinance (Rec. p. 33; Statement 13).

69 *Brief.*

1. In the Gunning case, the ordinances here in review were upheld under the facts of that case as authorized exercise of police power. The decision fully admits that the ordinances are unconstitutional, unless enacted for protection of public safety, health, or morals. The Court on the facts in that case found the bill-boards to be flimsy structures, liable to fall in any breeze and composed of highly inflammable material, together with other facts, making them dangerous to public health, safety, and morals. Without such facts, as appears in the opinion the ordinances could not have been upheld.

2. Thereafter plaintiff brought this bill, where in each and every fact from which support could be drawn for the Gunning ruling is expressly negatived. The converse is in each instance averred, and specific facts, showing these averments to be true, are set forth in detail, supported by affidavits of parties of trustworthiness and special knowledge in the premises. The City did not choose to take issue on the facts, but demurred, thus admitting throughout all hearings in this case the truth of the matter set forth in the petition. We shall not here set forth the contrasts in facts between this case and the Gunning case. It was done orally on argument in banc, and most pages in our brief contain some reference to them. Point IX, pp. 65-71 of our brief gives in condensed form some of such contracts.

3. The opinion given in Division I has been adopted as the opinion of the Court en banc.

The first paragraph deals exclusively with the license fee, to which we shall recur hereafter.

The second paragraph overruled the claim in the demurrer that the Gunning case was controlling in this case on the principle
70 of stare decisis. "We are of opinion that however persuasive the decision of that case may be, it does not constitute a bar

to this action by a different plaintiff, who is here with his own facts, urging that so far as the Gunning case conflicts with its own contention, it should be reviewed." The paragraph ends by adopting a quotation from Long vs. Long, 79 Mo. 644: "The proper limitation to the doctrine of stare decisis is, that when they can be used only as instruments of wrong and destruction, error ceases to be sacred, and principles and truth ought to be reasserted."

We give the whole of the rest of the opinion, so that the Court may have it before it, for its convenience, in this motion:

"3. The real question raised by this appeal relates to the reasonableness and consequent validity of an ordinance of the City of St. Louis which provides in effect that every board erected or maintained in the City of St. Louis shall conform to the following specifications: (1) that it shall not exceed 500 square feet in area; (2) that it shall not exceed the extreme height of fourteen feet above the ground; (3) that they have a space of at least four feet between the lower edge of the board and the ground; (4) that it shall not be less than fifteen feet distant from the nearest street; (5) that it shall not be less than six feet distant from the nearest building.

This question is raised upon a petition in equity by which the appellant seeks to enjoin the threatening destruction by the defendant city and its officers of certain bill-boards which conflict, in their construction, with each of the above specifications. The appellant contends that in each of these particulars the ordinance is unreasonable, in that it unnecessarily and arbitrarily interferes with and obstructs the plaintiff in the prosecution of a lawful business and in the use and enjoyment of its property in the defendant city, is beyond the scope of the powers conferred upon the city by the constitution and laws of this state which constitute its charter, and in so far as it may have been attempted to include it within its charter powers violates those familiar guaranties of the Constitution of the United States and of the state of Missouri designed for the protection of the owners of private property in its ownerships and beneficial use against the arbitrary action of the legislature. In support of this contention the appellant states that his bill-boards are absolutely safe in construction, that the business to which they are devoted is as legitimate and beneficial to the general public as other commercial enterprises; that their existence and maintenance contravene no right of the public to the occupation or use of the land on which they are situated; that the unnecessary limitation of the size of its structures would deprive it of the greater part of the revenue it would otherwise earn, and that their limitation with reference to their position deprives him of the use of the land from which he would otherwise receive legitimate revenues, without compensation.

71 All these matters were before this court in St. Louis Gunning Company vs. St. Louis, 235 Mo. 99. In that case the matter decided is fairly stated in a syllabus as follows: 'An ordinance declaring that no bill-board hereafter erected, altered, refaced or reconstructed shall exceed fourteen feet in height above the ground, and every such bill-board shall have an open space of at least four feet between the lower edge and the ground, which space shall not

be closed in any manner while the bill-board stands; nor shall any such bill-board exceed five hundred square feet in area, nor approach the street line on any street on which any lot fronts nearer than fifteen feet; and where buildings are hereafter built near or adjacent to bill-boards such bill-boards shall be so moved or cut off as to leave a space of not less than six feet between the building and such bill-board, is a reasonable police regulation, in the interest of the public health, safety, peace and morals.'

That decision was by the court En Banc, where if it is to be reconsidered such reconsideration should be had. It follows that upon the authority of that case the judgment of the circuit court in this case must be affirmed."

It will be seen that the substance of the opinion is in the brief statement that the Gunning case will be followed. If the Court assumed the facts in the two cases to be the same, there was obviously a mistake as to fact. If the ruling is that the law governing the facts in the Gunning case also governs the facts in this case (the difference being that between black and white), it may be remarked that the Court does not directly say so, and further that it suggests no reason whatever for such a conclusion.

In our motion to have the case transferred to Court en banc, we said among other things: "We call the Court's attention to the fact that the present opinion contains not a syllable dealing with the contentions the appellant submitted after no little reflection with fullness of citation. The statement we have just made voices no criticism on the propriety of the action of the Court in the premises. This Court in Division might deem it proper to follow a decision of the Court en banc upholding the constitutionality of the very ordinances before the Division in the pending case, declining to consider the difference in facts in the two cases, and declining to reexamine the rulings of the Court en banc in the former case. But since the appellant is entitled to a consideration of his case
72 somewhere, both on the proposition that on the facts it does not come under the Gunning ruling — is in itself erroneous, it seems clear that this Court, refusing to deal with the questions presented, looked to the Court en banc as the place where appellant's contention should receive consideration." That opinion without the addition of a syllable is now the opinion of the Court en banc; and is the only visible answer to the elaborate argument and citations of appellant. To comply with the rule, our motion for rehearing sets forth specific points, and refers to the pages of the brief where they are discussed. But the record warrants the broader assertion that this decision ignores each and every point concerning police power made by appellant.

We believe we are justified in asking: What is the legal doctrine on constitutional law set forth in this opinion?

In the Gunning case, the regulation requiring bill-boards to be set back fifteen feet from the sidewalk was upheld because—and only because—the bill-boards in that case were flimsy structures liable to fall at a slight breeze, thus endangering passersby.

In this case, the regulation is also upheld. But the sole fact justi-

fying the Gunning decision does not exist in this case. So far from being flimsy, the bill-boards in this case are exceptionally strong, as contrasted with other structures.

To us it would seem that the present decision is in conflict with the principles laid down in the Gunning case. That can't be so, however; for this opinion tells us in so many words that it follows the Gunning case. This decision can hardly mean that bill-boards, specifically, can be forbidden (on fifteen feet) even when the conceded fact is that they do not interfere with public safety, health, or morals. Our failure to grasp the principles of constitutional law on which the decision rests may be shared by others. We submit that it seems desirable that questions concerning the Fourteenth Amendment should be passed on in decisions sufficiently elaborate to enable the slow-minded to follow the logical processes of the Court.

73 We have used the constitutionality of the fifteen foot restriction as our illustration. The application to the other provisions, as far as police power is concerned, is simple. We abstain from elaboration for brevity's sake.

4. In Paragraph one of the opinion, the Court refuses to consider the constitutionality of the excessive license fee for bill-boards, on the ground that it is not properly brought before the Court.

The ordinances charging $1.00 for $1,000 cost of building for buildings and $1.00 for five linear feet for bill-boards are set forth in the Record at page 10, and in our Statement at Page 9. The cost of constructing bill-boards is $2.00 per linear foot, the total of 50,000 linear feet of bill-boards owned by appellant having cost $100,000 (Rec. p. 3; Statement p. 2). The Commissioner of Public Buildings "has repeatedly refused and still refuses to issue permits to plaintiff for the construction or repair of bill-boards and signs in the City of St. Louis in accordance with valid ordinances of the City, and has declared his intention of enforcing or attempting to enforce said pretended ordinances and every provision thereof," which, we take it, includes the cited provision for license fees (Rec. p. 33; Statement p. 13). The eighth of the specified grounds of objection is devoted to this license feature (Statement p. 75). We submit it sufficiently appears that plaintiff has applied to the Commissioner of Buildings for permits to erect bill-boards, and has been refused unless he would pay the fee called for by the challenged ordinance. This would seem to satisfy technical requirements or pleading. Besides it is to be remembered that the respondent has at no time made any objection to the form in which this issue is raised, and that it is peculiarly in its interest, being a municipal corporation, to have the validity of its questioned enactments passed on by the Court,

74 whenever opportunity is presented. We submit to the Court that no technical objections present consideration of the point, and that all parties to this litigation wish it. And this being true, then why this Court of its own motion refuses to pass upon the point, we fail to understand.

Respectfully submitted,

MARION C. EARLY,
Attorney for Appellant.

75 And thereafter, to-wit, on the 1st day of June, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

No. 18441.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS et al., Respondents.

Now at this day, the Court having fully considered and understood the motion heretofore filed by the said appellant for a rehearing herein, doth order that said motion be, and the same is hereby overruled.

And thereafter, to-wit, on the 21st day of June, 1917, the following further proceedings were had and entered of record in said cause, to-wit:

No. 18441.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS et al., Respondents.

Now at this day comes the said appellant, St. Louis Poster Advertising Company, by attorney, and presents to the Honorable W. W. Graves, Chief Justice of the Supreme Court of Missouri, in chambers, its petition for a writ of error from the Supreme Court of the United States to the Supreme Court of Missouri, a writ of error from the Supreme Court of the United States to the Supreme Court of Missouri, an assignment of errors, a citation directed to the said respondents, citing them to be and appear in the Supreme Court of the United States within not exceeding thirty days from the date of said citation, also bond in the sum of five hundred dollars ($500.00); which said writ of error is allowed, said assignment of errors ordered filed, said citation signed and issued, and said bond approved and ordered filed.

Which said petition for a writ of error is, in words and figures, as follows, to-wit:

76 UNITED STATES OF AMERICA,
State of Missouri, ss:

In the Supreme Court of Missouri, in Banc, April Term, 1917.

No. 18111.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Appellees.

Petition for a Writ of Error to the Supreme Court of the United States.

To the Honorable Chief Justice of the Supreme Court of Missouri:

Now comes your petitioner, the St. Louis Poster Advertising Company, a corporation, by Marion C. Early, its attorney, and represents and shows to this Court and to the Honorable Chief Justice of this Court, that on the 22nd day of May, 1917, this, the Supreme Court of Missouri, handed down an opinion and rendered a decision and judgment against your petitioner in the above entitled cause, which was then pending before this Court and wherein your petitioner was appellant, and the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, were appellees.

That on the 29th day of May, 1917, and within the time prescribed by the rules of this Honorable Court, your petitioner filed in this Court, its application or motion to set aside the said opinion, decision and order entered herein on the 22nd day of May,
77 1917, and to grant to your petitioner, a re-hearing of this cause, which said motion is presented herewith, as a part of the record of this cause;

That on the 1st day of June, 1917, this Honorable Court denied said application and motion to set aside the said opinion, decision and judgment of May 22nd, 1917, and refused to grant to your petitioner a re-hearing of said cause.

That by overruling and denying your petitioner's application and motion to set aside said decision, and to grant it a re-hearing of this cause, the said decision, order and judgment entered in this cause on the 22nd day of May, 1917, did, on the 1st day of June, 1917, become a final decision and judgment against your petitioner in this cause, and a final judgment and decision, affirming the judgment and decree of the Circuit Court of the City of St. Louis, rendered in this cause against appellant, your petitioner and in favor of the said appellees.

That this, the Supreme Court of Missouri, is the highest Court

of law or equity in the said State of Missouri, in which a decision can be had in this cause, that in this Court the said final judgment was rendered against your petitioner, as above set forth, and that the record of this cause is now presented, from which said record it will appear, and your petitioner represents and shows to this Court, as follows:

78 1. That on the trial of said cause in the Circuit Court of the City of St. Louis, and in the proceedings in this cause in this, the Supreme Court of Missouri, upon the review of said judgment of the Circuit Court of the City of St. Louis, there was set up by your petitioner and drawn in question and finally decided adversely to your petitioner by the said final judgment of this, the Supreme Court of Missouri, a claim of privilege and immunity belonging to your petitioner, under the Fourteenth Amendment of the Constitution of the United States, and also under the Fifth Amendment of the Constitution of the United States.

2. That from the record of this cause, herewith presented, it appears that in this cause in the said Circuit Court of the City of St. Louis, and in the proceedings in said cause in this, the Supreme Court of Missouri, there was drawn in question by your petitioner, the validity of a certain ordinance enacted by the Municipal Assembly of the City of St. Louis, and known as Ordinance numbered 22022, and Sections 2, 14, 81, 177, 178, 179, 180 and 181 of said Ordinance, and each of them, purporting to regulate and control the erection and location of various structures therein defined, in the City of St. Louis, and State of Missouri.

3. That by said record of this cause, it is also shown and appears that the validity of said ordinance numbered 22022, and Sections 2, 14, 81, 177, 178, 179, 180 and 181 of said ordinance, and each of them, was drawn in your question in said cause by your petitioner, in the Circuit Court of the City of St. Louis, and in the proceedings in this cause before this, the Supreme Court of Missouri, and that the said ordinance numbered 22022 and Sections 2, 14, 81, 177, 178, 179, 180 and 181 of said ordinance and each of them, were claimed by your petitioner to be invalid and unconstitutional, because in contravention of the Fourteenth Amendment to the Constitution of the United States, in that each of said ordinance provisions de-

79 prives your petitioner of its liberty or property, without due process of law, and denies to your petitioner the equal protection of the laws.

4. That by said record above referred to, it is shown and appears that the validity of said ordinance was questioned in this cause by your petitioner, in the Circuit Court of the City of St. Louis, and in the proceedings had herein, in this, the Supreme Court of Missouri, and that the validity and constitutionality of said ordinance numbered 22022 and Sections 2, 14, 81, 177, 178, 179, 180 and 181 of said ordinance and each of them, were claimed by your petitioner to be involved in this cause, because your petitioner contended herein that each of said sections of said ordinance was a violation of the constitutional rights of your petitioner, and in contravention of the Fifth and the Fourteenth Amendments of the Constitution of the United

States, in that it deprived your petitioner of its liberty and property, without due process of law, denied to your petitioner the equal protection of the laws, and took the private property of your petitioner for public use, without just compensation.

5. That the question of the validity and constitutionality of said ordinance, and of each section and provision thereof, under the Fifth and Fourteenth Amendments to the Constitution of the United States was so raised and drawn in question in the Circuit Court of the City of St. Louis, and in this, the Supreme Court of Missouri, as depriving your petitioner of its liberty or property, without due process of law, as denying to your petitioner the equal protection of the laws, and as taking the private property of your petitioner for public use, without just compensation, will appear and is shown by the said record in this cause, herewith presented, and that it further appears and is shown by the said record, that the validity and constitutionality of each of the sections and provisions of said ordinance has been finally decided adversely to your petitioner, by this, the Supreme Court of Missouri, and that, in the said
80 final decision and judgment of this, the Supreme Court of Missouri, certain errors were committed, to the prejudice of your petitioner, all of which said errors will more fully appear from the Assignment of Errors filed herein with this petition.

6. That, as appears from said Assignment of Errors, and from the matters above set forth, the final decision and judgment of this, the Supreme Court of Missouri, will deprive your petitioner of its liberty and property, without due process of law, will deny to your petitioner the equal protection of the laws, and will constitute a taking of your petitioner's private property for public use, without just compensation, in violation and in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States, and will deprive and take from your petitioner, the rights, privileges and immunities accorded to it by the Constitution of the United States, and by the Fifth and Fourteenth Amendments thereto. All of which will more fully appear from the record and proceedings in this cause.

Wherefore, your petitioner prays that a Writ of Error may be issued in its behalf in this Court, returnable unto the Supreme Court of the United States, for the correction of the errors complained of, that a bond may be approved and filed herein by your petitioner, in accordance with the statutes governing such proceedings, that the injunction prayed for in this cause may be granted until this cause shall have been disposed of and determined by the Supreme Court of the United States, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

ST. LOUIS POSTER ADVERTISING COMPANY,

By MARION C. EARLY, *Its Attorney.*

801/2 [Endorsed:] No. 18,141. United States of America, State of Missouri, ss: In the Supreme Court of Missouri, In Banc, April Term, 1917.

St. Louis Poster Advertising Company, Appellant, vs. The City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Appellees.

Petition for a Writ of Error to the Supreme Court of the United States.

Writ of Error granted this 21st day of June, 1917. W. W. Graves, Chief Justice.

Filed Jun- 21, 1917. J. D. Allen, Clerk Supreme Court.

81 Which said assignment of errors is in words and figures as follows:

UNITED STATES OF AMERICA,
State of Missouri, ss:

In the Supreme Court of Missouri, in Banc.

No. 18141.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

Assignment of Errors.

Now comes the petitioner, St. Louis Poster Advertising Company, a corporation, by Marion C. Early, its attorney and with its petition for a Writ of Error to the Supreme Court of the United States, files this, its Assignment of Errors and says that in the record and proceedings in the above entitled cause there is manifest error in this:

1. The final judgment and decision of the Supreme Court of the State of Missouri, deprives this petitioner of its liberty and property without due process of law, in violation and in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. The final Judgment and decision of said Supreme Court of Missouri denies to this petitioner the equal protection of the laws, in violation and in contravention of the Fourteenth Amendment to the Constitution of the United States.

3. Said Court erred in holding that the ordinance of said City of St. Louis enacted by the Municipal Assembly of said City in April A. D. 1905 and numbered 22022, and specifically Sections

82 2, 14, 81 and 177 to 182 thereof inclusive are constitutional, because the City of St. Louis has no authority or power in law to make the regulations contained in said ordinances, and has

no power or authority to deprive the owners and lessees of private property of the unrestricted, free and reasonable use thereof, as by the said ordinances is attempted to be done.

4. Said court erred in holding said ordinances constitutional because: The provisions of said ordinances are unreasonable, unjust and oppressive, and go far beyond any regulations necessary for the protection of the lives, morals and property of the inhabitants of the City of St. Louis.

5. Because said ordinances are not uniform in their operation upon all classes to which they apply, but discriminate against structures erected for advertising purposes, and discriminate against them merely because they are erected for advertising purposes.

6. Because said ordinances undertake to force the same limitations and regulations upon advertising structures or bill-boards in the open and unsettled part of the City as in the down-town and thickly settled sections.

7. Because said ordinances, as interpreted and threatened to be enforced by the Commissioner of Public Buildings, prohibit plaintiff from making reasonable and necessary repairs on the signs and bill-boards heretofore by it erected, and thus will prevent it from relieving itself from great loss and from prospective liability for damages which might arise by reason of injuries caused by boards that become unsafe.

8. Because said ordinances, if and as threatened to be enforced, would deprive the owners and lessees of private property within the limits of the City of St. Louis, and especially this plaintiff, of the lawful and reasonable use of that part of said property which lies within fifteen feet of any public street or within six feet of
83 any building, without any necessity therefor and without any compensation whatever.

9. That said ordinances arbitrarily, oppressively and unreasonably limit the height and size of bill-boards, without regard to the location or the surrounding conditions.

10. Said ordinances attempt to prescribe an unjust, unreasonable and oppressive fee to be paid for permits to erect signs and bill-boards within the City of St. Louis, without any reason therefor, and said fees are far in excess of and more than five hundred times greater than the fees charged for similar permits for any other structure or buildings, involving as much and greater service by the officers of the city.

11. Said ordinances attempt to prescribe the kind of material out of which signs of certain dimensions shall be constructed, without regard to the requirements of the location and surroundings of said signs.

12. Said ordinances are designed to and do discriminate against the lawful business in which plaintiff is engaged, and were designed to and ultimately will deprive plaintiff and all others engaged in the same business of their present plants, and will drive them entirely out of business in the City of St. Louis.

13. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United

States, in that they deprive plaintiff and the owners, lessees and occupants of its and their property, by imposing an unnecessary and unreasonable limitation upon plaintiff's business and upon the use of lands and property in the City of St. Louis for the construction and maintenance of bill-boards and structures for the display of poster advertisements.

14. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they constitute a taking of the property of plaintiff, and of the owners, lessees and occupants of lands in the
84 City of St. Louis for an alleged public use without just compensation.

15. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that the limitation which they impose upon the use of real property of plaintiff and others in the City of St. Louis constitutes the taking of private property for a use which is not public, and without just compensation.

16. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by denying to plaintiff, and to the aforesaid owners, lessees and occupants of lands in the City of St. Louis, the equal protection of the laws of the State of Missouri, and that they violate the same section by abridging the privileges and immunities of plaintiff and the aforesaid owners, lessees and occupants, being individuals and citizens of the United States.

17. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff of the right of carrying on the lawful business of displaying advertisements upon its boards, so constructed on private property as not to endanger the safety of the public; and also in that said ordinances violate the same provisions by depriving plaintiff and the owners, lessees and occupants of lands in the City of St. Louis of the right and privilege to use and derive profit from the erection and maintenance upon such lands of bill-boards so constructed as not to endanger the safety of the public, although exceeding in dimensions the limitations attempted to be imposed by said ordinances.

18. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving plaintiff and the owners, lessees and occupants of lands within the City of St. Louis of their liberty without due
85 process of law, to-wit: the liberty of maintaining, erecting and displaying, and permitting to be maintained, erected and displayed bill-boards, so constructed as not to endanger the safety of the public, although exceeding in dimensions, and otherwise the limitations attempted to be imposed by the aforesaid ordinances thus depriving plaintiff of the liberty to carry on a lawful business, without unreasonable restrictions, and depriving the said owners, lessees and occupants of the liberty of making a beneficial and profitable use of their property.

19. The said Court erred in holding that the classification of structures, as contained in the definition of the term "Bill-Board," as used in said ordinance, was justifiable, and did not constitute a discrimination against this petitioner, and against a lawful use of private property, in violation of the Constitution of the United States.

ST. LOUIS POSTER ADVERTISING COMPANY,

By MARION C. EARLY, *Its Attorney.*

85½ [Endorsed:] No. 18441. United States of America, State of Missouri, ss: In the Supreme Court of Missouri, in Banc. St. Louis Poster Advertising Co., Appellant, vs. City of St. Louis et al., Appellees.

Assignment of Errors. Filed Jun. 21, 1917. J. D. Allen, Clerk Supreme Court.

Which said bond is in words and figures as follows, to wit:

86 Copy.

Bond.

Know all men by these presents, That we, St. Louis Poster Advertising Company as principal, and Marion C. Early as surety are held and firmly bound unto the City of St. Louis, the Mayor of that City, the Commissioner of Public Buildings of said City and the Chief of Police of said City in the full and just sum of Five Hundred and No 100 ($500.00) Dollars, to be paid to the said City of St. Louis, the Mayor, of said City, the Commissioner of Public Buildings of said City, and the Chief of Police of said City, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 21st day of June, in the year of our Lord, One Thousand Nine Hundred and Seventeen.

Whereas, lately at the April Term, A. D. 1917, of the Supreme Court of Missouri, in a suit pending in said Court between St. Louis Poster Advertising Company, Appellant, and the City of St. Louis, the Mayor of said City, the Commissioner of Public Buildings of said City, and the Chief of Police of said City, as appellees, judgment was rendered against the said Appellant, and the said Appellant, having obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Appellees citing and admonishing them to be and appear at a Supreme Court of the United States to be held at Washington, D. C., not exceeding thirty days from and after the date of the Citation in said cause.

Now, the condition of the above obligation is such, that if the said Appellant shall prosecute said writ to effect and answer all damages

and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

ST. LOUIS POSTER ADVERTISING COMPANY,
By ST. LOUIS POSTER ADVERTISING CO.,
By M. C. EARLY, *Its Agent and Atty.*
MARION C. EARLY. [SEAL.]

Approved by
W. W. GRAVES,
Chief Justice Supreme Court of Missouri.

87 Which said praecipe is in words and figures as follows, to-wit:

In the Supreme Court of the State of Missouri, April Term, 1917.

No. 18111.

ST. LOUIS POSTER ADVERTISING COMPANY, Appellant,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

Praecipe for Record.

To Honorable J. D. Allen, Clerk of the Supreme Court of Missouri:

In obedience to the command of the writ of error issued in said cause from the Supreme Court of the United States to the Supreme Court of the State of Missouri, on June 21, 1917, you will please send to the Supreme Court of the United States, as commanded in said writ, the following record of the entries, proceedings and matters in said cause, to-wit:

(1). Said writ of error.

(2). Your return to same.

(3). The citation issued in said cause.

(4). Acknowledgment of service thereon by the attorney for defendants in error, Charles H. Dames.

(5). Record entry of your Court showing the filing and date of filing of the certified copy of judgment in said cause, entered by the Circuit Court of the City of St. Louis, Missouri, together with
88 the filing and date of filing of the order of said Circuit Court granting an appeal in said cause from said Circuit Court to the Supreme Court of the State of Missouri.

(6). A certified copy of said judgment and order granting appeal.

(7). The complete abstract of the record filed in said cause.

(8). The order of the Supreme Court of Missouri showing the submission of said cause to said Supreme Court.

(9). The judgment and opinion of the Supreme Court of Missouri in banc, through Brown, Commissioner.

(10). Copy of opinion of the Supreme Court in banc in the cause of St. Louis Poster Advertising Company, Appellant, vs. City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents, rendered by the Court on May 22, 1917.

(11). Copy of dissenting opinion of Justice W. W. Graves in the case of St. Louis Poster Advertising Company, Appellant, vs. City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents, rendered in the Supreme Court of Missouri in banc on May 22, 1917.

(12). Order of Supreme Court of Missouri filing Appellant's motion for rehearing of the said cause.

(13). The said motion for rehearing.

(14). Order of the Supreme Court of Missouri overruling said motion for rehearing.

(15). Order of the Supreme Court showing the presentation to the Honorable W. W. Graves, Chief Justice of the Supreme Court of the State of Missouri of the following matter in said cause,
89 to-wit: a petition for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri together with an assignment of errors committed by said Missouri Supreme Court, a citation directed to the respondents (defendants in error), citing them to appear at the Supreme Court of the United States in not exceeding thirty days from the date of the citation; also appellant's (Plaintiff in error) bond in the sum of Five Hundred ($500) Dollars, and showing the filing of said petition and assignment of errors, the allowance of said writ of error, signing and filing of said citation and the approval and filing of said bond.

(16). The said petition for writ of error in said cause.

(17). The said assignment of errors in said cause.

(18). The said bond in said cause.

Very respectfully yours,

ST. LOUIS POSTER ADVERTISING COMPANY,

By MARION C. EARLY, *Its Attorney.*

Service of a true copy of the foregoing praecipe is hereby acknowledged this 22nd day of June, 1917.

CHARLES H. DAUES,

Attorney for Respondents (Defendants in Error).

89½ [Endorsed:] No. 18441. In the Supreme Court of the State of Missouri, April Term, 1917.

St. Louis Poster Advertising Company, Appellant, vs. The City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Respondents.

Praecipe. Filed Jun. 25, 1917. J. D. Allen, Clerk Supreme Court.

90 STATE OF MISSOURI, *set:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing contains a full, true and correct copy of the proceedings in said Court in the above-entitled cause, together with all papers and record entries, as called for in the praecipe filed herein, as fully as the same appear of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of our said Supreme Court. Done at office in the City of Jefferson, this 27th day of June, 1917.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court of the State of Missouri.

Endorsed on cover: File No. 26,033. Missouri Supreme Court. Term No. 566. St. Louis Poster Advertising Company, plaintiff in error, vs. The City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police. Filed July 11th, 1917. File No. 26,033.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 19[redacted]

No. [redacted] 2

THE ST. LOUIS POSTER ADVERTISING COMPANY,
APPELLANT,

vs.

CITY OF ST. LOUIS, HENRY W. KEEL, MAYOR; JAMES N. McKELVEY, COMMISSIONER OF PUBLIC BUILDINGS, AND WILLIAM YOUNG, CHIEF OF POLICE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 13, 1914.

(24,165)

(24,165)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 1014.

THE ST. LOUIS POSTER ADVERTISING COMPANY, APPELLANT,

vs.

CITY OF ST. LOUIS, HENRY W. KEEL, MAYOR; JAMES N. McKELVEY, COMMISSIONER OF PUBLIC BUILDINGS, AND WILLIAM YOUNG, CHIEF OF POLICE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 3, 1914.

1 The United States of America to City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal granted by the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein St. Louis Poster Advertising Company, is Appellant, and you are Appellees, to show cause, if any there be, why the judgment rendered against the said Appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable David P. Dyer, Judge of the District Courts of the United States within and for the Eastern District of Missouri, this 21st, day of March in the year of our Lord one thousand nine hundred and fourteen.

DAVID P. DYER,
United States District Judge
for the Eastern District of Missouri.

Service of this citation acknowledged on behalf of the above mentioned Appellees, this 21st day of March, A. D. 1914.

WILLIAM E. BAIRD,
Solicitor for Defendants-Appellees.

2 [Endorsed:] No. 4256. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis Poster Advertising Co. vs. City of St. Louis et al. Citation. Filed Mar. 21, 1914. W. W. Nall, clerk.

3 UNITED STATES OF AMERICA,
Eastern Division of the
Eastern Judicial District of Missouri, ss:

Be it remembered, that heretofore, to-wit: on the 21st day of March A. D. 1914, in a cause pending in the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, entitled St. Louis Poster Advertising Company, a corporation, Complainant, versus City of St. Louis, Henry W. Kiel, Mayor; James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants, In Equity, No. 4256, a Praecipe was filed by said complainant for a transcript of the record in said cause upon appeal to the Supreme Court of the United States, which praecipe is in words and figures, as follows, to-wit:

(*Præcipe for Transcript.*)

4 In the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1913.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainants,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Præcipe for Transcript.

To the Clerk of said Court:

You are requested to make a transcript of the record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and the said appellant hereby designates all of that portion of the Record to be included in said transcript to be printed as follows, to-wit:

1. Bill of Complaint in Equity; filed January 30, 1914.
2. Defendants' motion to dismiss complainant's bill, filed February 13, 1914.
3. Final Decree dismissing complainant's bill of complaint, entered in said cause, February 19, 1914.
4. Petition for appeal, filed March 21st, 1914.
5. Order of March 21, 1914, allowing appeal.
6. Order approving appeal bond dated March 21, 1914.
7. Copy of appeal bond.
8. Assignment of Errors filed March 21, 1914.
9. Copy of appellant's Præcipe for transcript and citation.

5 You are further requested to file said transcript with the clerk of the Supreme Court of the United States.

MARION C. EARLY,
Solicitor for Complainant.

Service of above præcipe for transcript is hereby admitted this 12th day of March, 1914.

WILLIAM E. BAIRD,
TRUMAN P. YOUNG,
Solicitors for Defendants in Error.

MATT G. REYNOLDS,
Of Counsel for Complainant.

The files, papers and proceedings mentioned and called for in said præcipe are, respectively, in words and figures, as follows, to-wit:

(Bill of Complaint.)

6 Equity Docket No. 42.

In the District Court of the United States, Eastern Division of the Eastern District of Missouri.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Bill for Injunction.

Marion C. Early, Solicitor for Complainant.
Matt. G. Reynolds, of Counsel.

Filed Jan. 30, 1914.

W. W. NALL, *Clerk*.

7 In the District Court of the United States, Eastern Division of the Eastern District of Missouri.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,

vs.

CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Bill for Injunction.

To the Honorable Judge of the District Court of the United States for the Eastern Division of the Eastern District of Missouri, in Equity Sitting:

Your orator, St. Louis Poster Advertising Company, a resident of the City of St. Louis, Missouri, and a citizen of said State of Missouri, complainant, brings this, its bill of complaint, against the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey,
8 Commissioner of Public Buildings, and William Young, Chief of Police of the City of St. Louis, all residents of said City of St. Louis and citizens of said State of Missouri, and respectfully complaining shows unto your Honor:

I.

Your orator, St. Louis Poster Advertising Company, was incorporated under the laws of the State of Missouri on February 1st, 1894,

under the name of "The St. Louis Bill Posting Company," a certified copy of its charter being filed of record in the office of the Recorder of Deeds for the City of St. Louis, in corporation book 12, page 457; its name was subsequently duly changed to "St. Louis Poster Advertising Company," and it now is and at all the times herein mentioned was a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in the City of St. Louis and within the Eastern Division of the Eastern District of Missouri; the defendant, City of St. Louis, is a municipal corporation organized and existing under and by virtue of the Constitution of the State of Missouri; the defendant, Henry W. Kiel, is Mayor of said City of St. Louis; the defendant, James N. McKelvey, is Commissioner of Public Buildings for said City of St. Louis, which said office of Commissioner of Public Buildings for said City of St. Louis is a public office created and existing under and by virtue of the charter and ordinances of said City of St. Louis; the defendant, William Young, is the duly appointed and acting chief of police for said City of St. Louis, and all of said defendants are citizens of the State of Missouri and inhabitants of and are located and have their residence in the Eastern Division of the Eastern Judicial District of Missouri.

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II.

Your orator shows unto your Honor that the cause of action stated in this complaint, and the jurisdiction of this court, arise under the Constitution and laws of the United States, as fully appears from the allegations and averments herein set forth.

III.

Your orator is now and since 1894 has been engaged in the business of bill-posting and advertising in the City of St. Louis; it has erected and now maintains a large number of bill-boards and signs upon lots, tracts, parcels of lands and buildings situated in various parts of the City of St. Louis; at the present time it owns, leases and uses more than seven hundred bill-boards and signs within the City of St. Louis; said billboards extend over a total space of approximately fifty thousand linear feet and were erected at a cost of about one hundred thousand dollars, and complainant has furthermore invested a large amount of capital in establishing a plant and equipment for carrying on its business and the same are not adapted to any other business; the total outer face or posting surface of the billboards and signs owned and used by complainant in said City of St. Louis amounts to approximately five hundred thousand square feet; the vast production of posters and their extensive use in all lines of business advertising has created a need for suitable structures wherein to display the same, and that such structures have become standardized and have reached a high degree of excellence in manufacture and, as your orator is informed and believes, in practically every city and town in the United States and in all foreign

10 countries, there are persons and corporations whose business it is to secure locations for and to erect such structures there-

upon and to display thereon for hire, posters and poster advertisements, and that such structures are commonly called billboards, although the same are usually faced with iron or steel and are often constructed entirely of iron or steel, thus making a stronger, safer and more durable structure than ever required by any ordinance or pretended ordinance of the City of St. Louis.

IV.

Your orator further shows unto your Honor that the business of manufacturing posters has reached enormous proportions in the United States and foreign countries and that a vast amount of capital is employed in that industry and large numbers of persons depend upon that business for support; that the size of commercial posters has become uniform and standard; and your orator avers that the standard height of such standardized posters require- for their display a poster surface not less than 10 feet 6 inches in height and from 9 to 70 feet in length; that the equipment of the plants engaged in the manufacturing of commercial and theatrical posters is adapted to the production of such standard size, and that no change can be made in such standard size without tremendous initial expense and loss; that such posters can only be prepared advantageously and profitably in large quantities on account of the great initial expense for designs, lithograph stones and plates, etc., and that in order to use such posters advantageously and economically the customers of your orator and of others engaged in like business require and direct that such posters used by said customers be posted generally and
11 often simultaneously throughout the cities of the United States and Canada; that all the said billboards of your orator have been constructed the necessary length and height to give the required outer face or poster surface for the posting thereon of such standardized advertising and thus meet the needs of your orator, and your orator avers that any limitation whereby it shall be compelled to reconstruct and reduce the present size of its said billboards will disastrously affect the business of your orator and deprive it unlawfully of its property.

V.

Your orator further shows unto your Honor that in all cases the billboards of your orator have been built upon private ground, property, buildings, wall spaces or vacant lots leased to or owned by your orator, and that in no case are the billboards of your orator erected upon public property or upon public streets, but only upon private lots adjoining public streets and alleys and your orator avers that no advertisements have been permitted to be displayed upon the billboards or signs of your orator which have been in any manner vicious or injurious to the morals of the residents of or visitors to the City of St. Louis, and your orator avers that it has in the long course of business experience built up a valuable and profitable business which it avers is now and at all times has been conducted in a lawful manner and in compliance with the laws of the State of Missouri, and the valid ordinances of the City of St. Louis.

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VI.

Your orator further shows unto your Honor that in the erection and maintenance of its said billboards it has always complied with the laws of the State of Missouri and the valid ordinances of the City of St. Louis; that all of its said billboards and signs are built and constructed in a substantial, permanent, safe, workmanlike and sanitary manner; that said billboards are constructed in strict compliance with the plans and specifications prepared by competent engineers and architects and that the same are so constructed as to withstand and safely resist a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressure specified by the building ordinances of the said City of St. Louis for the frames of steel skeleton buildings and corresponds to a velocity of wind of eighty-three miles per hour, which is a greater velocity than any on record in the said City of St. Louis, and said billboards as constructed therefore have as great power of resistance as the standard required for the tallest office buildings; that in the construction of said billboards every reasonable precaution has been taken to insure safety from fire, all the frames and facings thereof being of galvanized steel; that many tests have demonstrated that said billboards will not carry fire, and if set on fire will not burn unless through the intervention of other causes; that it has never lost a billboard through fire nor has any of its billboards been blown down; consequently no fire or tornado insurance is carried thereon; the same are in numerous instances safely and carefully equipped with electric wires and lighted with electricity; that the said billboards and signs

13 are kept in a safe, permanent, substantial, workmanlike and sanitary condition, so that the same do not in anywise endanger or menace the lives or safety of persons passing by or in close proximity to said billboards and signs; that said billboards are made of the best material; that the same are maintained, managed and conducted in such manner as not to create a nuisance in fact or in law; and that the service rendered by your orator has become a commercial necessity to many enterprises doing lawful business in the City of St. Louis; that your orator has expended large sums of money in procuring leases from the various owners of lots upon which said billboards are erected, and in procuring permission to erect signs on buildings where it has placed such signs; that said leases and permit contracts run from three to five years in length of time; that your orator has from time to time made numerous contracts with its customers for the display of advertising matter upon said billboards and signs which said contracts run from six months to three years; that your orator by said contracts is obligated to maintain upon said billboards and signs within the City of St. Louis the advertisements of such customers, and the income of your orator is derived solely from the payments which said customers make to your orator for erecting and posting their advertisements and maintaining the same for the periods of time required by said contracts.

VII.

Your orator further shows unto your Honor that on or about the seventh day of April, 1897, the City of St. Louis, by its Municipal Assembly and Mayor, passed, or attempted to pass, an ordinance known as and numbered 18,964, a part of which ordinance
14 attempted to regulate the erection of billboards in the City of St. Louis, and is in words and figures as follows, to-wit:

"Section 209. Billboards—Hereafter no billboard shall be erected in the city limits, without first securing a permit from the Commissioner of Public Buildings, for which a fee of one dollar for every twenty-five feet or fraction thereof, shall be paid, and the manner of construction, location, and dimensions of such billboards shall have the approval of the Commissioner of Public Buildings. No billboard shall be erected within the fire limits which shall exceed fourteen feet high, but all billboards shall have at least two feet of clear space from the lower edge of the board to the ground under said billboards. It shall be unlawful to place one billboard over another, thereby increasing the height of such billboards."

VIII.

Your orator further shows unto your Honor that the City of St. Louis, by its Municipal Assembly and Mayor, on or about the seventh day of April, 1905, attempted to pass a pretended ordinance known as and numbered 22,022, said pretended ordinance purporting among other things to revise the building code of the City of St. Louis, the object and purpose of said pretended ordinance, as set forth in sections one and two thereof, being in words and figures as follows, to-wit:

"An ordinance to revise the Building Code of the City of St. Louis, being Article four, Chapter one, of the Municipal Code, by repealing Sections thirty-eight to two hundred and fifty-three, inclusive, of said article, and enacting in lieu thereof a new ordinance governing the construction and erection, reconstruction, alter-
15 ation, repair, remodeling, changing, moving, removal and securing of buildings in said city, and providing for the safety of buildings when so erected; also regulating the use of and providing for the safety of the public in theatres, opera houses and other buildings devoted to public amusement.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections thirty-eight to two hundred and fifty-three, inclusive, of the Municipal Code, are hereby repealed, and it is hereby enacted that the construction, erection, repairing and altering, or removal of buildings in the City of St. Louis shall hereafter be in conformity with this ordinance. Provided, that nothing in this ordinance shall be construed to prevent the completion of any building operations for which permits shall be in force at the time of the approval of this ordinance, in accordance with the terms of the ordinance in force at the time of the issuance of such permit."

Your orator further shows unto your Honor that the provisions of said pretended ordinance No. 22,022, applicable to your orator's business, are in words and figures as follows, to-wit:

"Section Two. Permit Required.—No work, except minor repairs shall be done upon any structure, building or shed in the City of St Louis without a permit from the Commissioner of Public Buildings. Before proceeding with the erection, enlargement, alteration, repair or removal of any building in the City, a permit for such erection, enlargement, alteration, repair or removal shall first be obtained by the owner or his agent from the Commissioner of Public Buildings,
and it shall be unlawful to proceed with the erection, enlarge-
16 ment, alteration, repair or removal of buildings or of any
structural part thereof, or of any structure which is to be used for the support, shelter or enclosure of persons, animals or chattels within the City, unless such permit shall first have been obtained from the Commissioner of Public Buildings."

"Section Fourteen. Cost of Permits.—The fee to be paid for a permit for the erection or alteration of buildings, shall be one dollar, if the estimated cost of said building or buildings, or alteration, shall be less than one thousand dollars; and for every additional one thousand dollars of cost, or fraction thereof, the further sum of fifty cents shall be paid. If it should appear to the Commissioner of Public Buildings, during the erection of any building or buildings for which a permit has been issued, that the cost of said building is in excess of the amount stated in the original application, the Commissioner of Public Buildings shall have the right to re-estimate the cost of any such building or buildings, and require the owner of said building or buildings to pay an additional fee, so that the fee paid shall conform to the entire cost of said building or buildings, as provided for in this section. The fee to be paid for a permit to remove a building shall be one dollar if the building covers twenty-five hundred square feet or less of area, and the further sum of fifty cents shall be paid for every additional twenty-five hundred square feet of area or part thereof. The fee to be paid for a permit to erect signs, as provided in section eighty-one of this ordinance, shall be at the rate of one dollar for every twenty-five square feet of area of such sign, or portion thereof. Each such permit shall state thereon the number and
size of signs permitted thereby, and the street and number of
17 the premises whereon they are to be placed. The fee to be
paid for a permit to erect billboards, shall be at the rate of one dollar for every five lineal feet thereof, and each such permit shall state thereon the length of billboards permitted thereby, the street and number of the premises whereon they are to be erected and their distance from the line of the street. The fee to be paid for a permit to erect or install any heating or power apparatus, as required in sections one hundred and nine and one hundred and ten, shall be one dollar for every such apparatus."

"Section Eighty-one. Signs.—Any signs now erected, or that may be hereafter erected, on the top of any building, or attached to the walls of any building, and that may become rotten or unsafe, shall be taken down and removed upon notice so to do from the Commis-

sioner of Public Buildings. No signs exceeding twenty square feet in size shall hereafter be erected on any building without a permit from the Commissioner of Public Buildings, as provided in sections two and fourteen of this ordinance. No sign exceeding three and one-half feet in width, or ten feet in height shall hereafter be attached to any building, unless such sign is constructed wholly of metal or other non-combustible material. When two or more signs are placed on any building, one above another, the width or height of the signs shall be measured as if there were but one sign, and the spaces between the signs shall be included in the width of the signs, unless there be a clear space of at least six feet between the signs. No sign shall hereafter project more than eighteen inches over the building line of any street or alley, nor shall any projecting sign be placed nearer than eight feet to the ground or pavement of any street or alley; nor shall any sign be so placed as to obstruct any fire escape, or interfere with the operations of the fire depart-
18 ment. Every sign hereafter erected upon any building shall be supported upon heavy iron braces bolted to the walls or roofs of the building in a firm and secure manner; and it shall be unlawful for any person, firm or corporation to erect or cause to be erected any sign in violation of this section."

"Section Eighty-two. Towers, Dormers and Spires on Top of Buildings.—Towers, dormers and spires may be erected on the roofs of buildings, but shall not occupy more than one-quarter of the street frontage of any building, and shall not in any case have a base area of more than sixteen hundred square feet. All such dormers, towers or spires shall be built of non-combustible materials. Towers, dormers or spires shall not be permitted on buildings of the second and third class where the extreme height of the top of the tower, dormer or spire shall exceed one hundred and fifty feet above the street grade.

Section One Hundred and Seventy-seven. Billboards.—Hereafter no billboard having twenty-five square feet or more of surface shall be erected, altered, refaced or reconstructed without a permit from the Commissioner of Public Buildings, and the manner of construction, location and dimensions of such billboard shall be subject to the approval of the Commissioner of public Buildings, in accordance with the provisions of this section. The term "billboard" within the meaning of this section shall include all structures of whatever material the same may be constructed, which are erected, maintained or used for the public display of posters, painted signs, pictures or other pictorial or reading matter, except that the term "billboard" shall not be applied to such signs as are attached to the roofs or walls of buildings, as provided for in section eighty-
19 one of this ordinance. No billboard hereafter erected, altered, replaced or reconstructed shall exceed fourteen feet in height above the ground, and every such billboard shall have an open space of at least four feet between the lower edge and the ground, which space shall not be closed in any manner while the billboard stands; nor shall any such billboard approach nearer than six feet to any building nor to the side line of any lot nor nearer than two feet to

any other billboard, nor shall any such billboard exceed five hundred square feet in area, nor approach the street line on any street, alley or right-of-way on which any lot fronts or abuts nearer than fifteen feet, but in all cases where the building line of buildings within fifty feet of the proposed billboard is more than fifteen feet from the street line or boundary line then such billboard shall not approach nearer to such street line or lot boundary line than the distance that the building line of such building is from such street line or lot boundary line; and where buildings are hereafter built near or adjacent to billboards such billboards shall be so moved or cut off as to leave a space of not less than six feet between the building and such billboard, which shall in all other respects also comply with the terms of this section. Any billboard which may now be or hereafter become rotten or unsafe, and any billboard which shall hereafter be erected, altered, refaced or reconstructed, contrary to the provisions of this section, or any of them, shall be removed or otherwise properly secured in accordance with the terms of this section by the owner thereof, or by the owner of the ground on which such billboard shall stand, upon receipt of proper notice so to do, as provided in section one hundred and seventy-nine of this ordinance, for the removal of unsafe structures, and no rotten or unsafe billboard shall be
20 repaired or rebuilt, except in accordance with the provisions of this section and upon a permit issued from the Commissioner of Public Buildings.

Section One Hundred and Seventy-eight. Fences, screens, etc.—No fence, screen or structure in the nature of a fence which exceed six feet in height shall hereafter be erected in the City of St. Louis unless the same is so constructed that the surface thereof is at regular intervals and in a uniform manner penetrated with openings, or latticed to the extent of at least fifty per cent of the area thereof, provided, however, that this section shall not apply to fences constructed wholly of brick or stone.

It shall be unlawful to erect or maintain any fence, screen, or other structure in the nature of a fence or screen exceeding eight feet in height above the ground unless such fence be constructed wholly of brick, metal or other non-combustible materials.

Section One Hundred and Seventy-nine. Unsafe structures—Notice to remove or make secure—Condemnation cost, how paid—Failure to comply with notice misdemeanor—Penalty.—Whenever the Commissioner of Public Buildings shall be informed or have reason to believe that any building or other structure within the City of St. Louis is in a condition or situation to endanger the lives of persons passing or residing in the vicinity thereof, or to endanger property, he shall immediately proceed to make a survey or examination of said building or other structure, and if, in his opinion, said building or other structure is in a condition or situation to endanger the lives of persons or injure property, he shall notify the owner or owners of such building or other structure to have the same removed or otherwise properly secured within three days after service
21 of such notice, and should said owner or owners fail to comply with said notice it shall be the duty of the Commissioner

of Public Buildings to proceed forthwith to have the same secured so as to render it safe unless, in his judgment, the same cannot reasonably be secured or rendered safe, in which case he shall demolish and remove the same, or so much thereof as may be necessary. The cost of securing said building or other structure or demolishing the same, or any part thereof, by the Commissioner of Public Buildings, shall be paid in the first place by the City out of a contingent fund, for which there shall be made an annual appropriation of not less than one thousand dollars for the purpose here designated. The Comptroller, upon receipt of a certificate from the Commissioner of Public Buildings of the amount expended by him for the securing or demolishing of any such building or other structure, which certificate shall be approved by the Mayor, shall then make out bills for said work against the owner or owners of said building or other structure. In case said bills are not paid upon presentation they shall be placed in the hands of the City Attorney or in the hands of some officer of the law department, who shall proceed to collect the same, by suit if necessary, and the amounts when collected shall be credited to said contingent fund. Every such owner who shall fail to comply with the requirements of the notice hereinbefore in this section provided for, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than five hundred dollars.

Section One Hundred and Eighty. Same—Notice, How Given—Interference With Giving Notice Misdemeanor—Penalty.—The notice to the owner of building or structure found to be
22 dangerous by the Commissioner of Public Buildings, as provided in section one hundred and seventy-nine shall be directed to the owner or owners of such buildings or other structures by name, if known; if not known then under the designation of the owner or owners of the building or structure designating it, and may be served in any one of the following ways:

First. By causing said notice to be delivered to such owner either in the City of St. Louis or elsewhere.

Or, second, by posting a copy of such notice upon the building or other structure, said notice to be deemed served at the end of twenty-four hours after the posting thereof.

Or, third, by mailing such notice, or copy thereof, enclosed in a sealed envelope, postage prepaid, directed to such owner, either at his business or residence address in this City or elsewhere, said notice to be deemed served twenty-four hours after the mailing of said notice, in case it is directed to the business or residence address of the owner in the City of St. Louis. Provided, that if the said owner or owners be non-residents of the City of St. Louis, and have no business addresses or offices in the City of St. Louis, then the said notice shall be deemed served at the end of such period after the mailing thereof as in the ordinary course of transmission of the mails by the United States Government would be required for the receipt of said notice by the owner or owners at their place of residence or business.

Or, fourth, by publication in the newspaper doing the City printing, said notice to be deemed served twenty-four hours after publication.

In case such building or other structure is in the occupancy of a tenant or tenants it shall be the duty of the Commissioner of
23 Public Buildings to post a copy of such notice upon such building or other structure.

Every person who shall attempt to prevent the Commissioner of Public Buildings, or any other employé of the City of St. Louis, from posting such notice on such building or other structure, or shall remove said notice or mutilate it or deface it, within four days after the same is posted, unless in the meantime such building or other structure has been put in a safe condition or been demolished, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than five hundred dollars.

Section One Hundred and Eighty-one. No agent of the owner of any building or other structure shall, after notice from the Commissioner of Public Buildings that such building or other structure is unsafe or dangerous, rent or lease the same or any part thereof, or collect any rent therefor until such building or other structure shall be rendered safe and secure or shall be demolished. Every agent who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than five hundred dollars.

Section One Hundred and Eighty-two. Commissioner's Power to Enforce Ordinance.—The Commissioner of Public Buildings shall have power to require all persons to correct, remove or abate any state of things done, caused or permitted by them in violation of this ordinance; and he shall upon a failure to comply with the requirements of this ordinance, when the public interest may so require, correct, remove or abate the same and all costs attending such action in such cases shall be paid from the contingent fund as
24 provided in section one hundred and seventy-nine, and then collected from the party offending as there provided, and the same shall also be a lien against the property whereon such violation was permitted to exist, to be collected as provided by law for liens in such cases; and any person, firm or corporation, who shall refuse or neglect to comply with the provisions of this section, or who shall violate any of the provisions thereof, shall be deemed guilty of a misdemeanor and shall be subject to the penalty as provided in section one hundred and eighty-four of this ordinance.

IX.

Your orator avers that said ordinances or pretended ordinances, and each section thereof, are unconstitutional and wholly void for the following, among other, reasons:

1. The City of St. Louis has no authority or power in law to make the regulations contained in said ordinances, and has no power or authority to deprive the owners and lessees of private property of the unrestricted, free and reasonable use thereof, as by the said ordinances is attempted to be done.

2. The provisions of said ordinances are unreasonable, unjust and oppressive, and go far beyond any regulations necessary for the pro-

tection of the lives, morals and property of the inhabitants of the City of St. Louis.

3. Said ordinances are not uniform in their operation upon all classes to which they apply, but discriminate against structures erected for advertising purposes, and discriminate against them merely because they are erected for advertising purposes.

4. Said ordinances undertake to force the same limitations
25 and regulations upon advertising structures or billboards in the open and unsettled part of the City as in the down town and thickly settled sections.

5. Said ordinances, as interpreted and threatened to be enforced by the Commissioner of Public Buildings, prohibit your orator from making reasonable and necessary repairs on the signs and billboards heretofore by it erected, and thus will prevent your orator from relieving itself from great loss and from prospective liability for damages which might arise by reason of injuries caused by boards that become unsafe.

6. Said ordinances, if and as threatened to be enforced, would deprive the owners and lessees of private property within the limits of the City of St. Louis and especially your orator of the lawful and reasonable use of that part of said property which lies within fifteen feet of any public street or within six feet of any building, without any necessity therefor and without any compensation whatever.

7. That said ordinances arbitrarily, oppressively and unreasonably limit the height and size of billboards, without regard to the location or the surrounding conditions.

8. Said ordinances attempt to prescribe an unjust, unreasonable and oppressive fee to be paid for permits to erect signs and billboards within the City of St. Louis, without any reason therefor, and said fees are far in excess of the fees charged for similar permits for any other structure or buildings, involving as much and greater service by the officers of the city.

9. Said ordinances attempt to prescribe the kind of material out of which signs of certain dimensions shall be constructed, without regard to the requirements of the location and surroundings of said signs.

26 10. Said ordinances are designed to and do discriminate against the lawful business in which your orator is engaged, and were designed to and ultimately will deprive your orator, and all others engaged in the same business, of their present plants, and will drive them entirely out of business in the City of St. Louis.

11. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that they deprive your orator and the owners, lessees and occupants of its and their property, by imposing an unnecessary and unreasonable limitation upon your orator's business and upon the use of lands and property in the City of St. Louis for the construction and maintenance of billboards and structures for the display of poster advertisements.

12. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United

States in that they constitute a taking of the property of your orator, and of the owners, lessees and occupants of lands in the City of St. Louis, for an alleged public use without just compensation.

13. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that the limitation which they impose upon the use of real property of your orator and others in the City of St. Louis constitutes the taking of private property for a use which is not public and without just compensation.

14. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by denying to your orator, and to the aforesaid owners, lessees and occupants of lands in the City of St. Louis, the
27 equal protection of the laws of the State of Missouri, and that they violate the same section by abridging the privileges and immunities of your orator and the aforesaid owners, lessees and occupants, being individuals and citizens of the United States.

15. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving your orator of the right of carrying on the lawful business of displaying advertisements upon your orator's billboards, so constructed on private property as not to endanger the safety of the public; and also in that said ordinances violate the same provisions by depriving your orator and the owners, lessees and occupants of lands in the City of St. Louis, of the right and privilege to use and derive profit from the erection and maintenance upon such lands of billboards so constructed as not to endanger the safety of the public, although exceeding in dimensions the limitations attempted to be imposed by said ordinances.

16. That said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States by depriving your orator and the owners, lessees and occupants of lands within the City of St. Louis of their liberty without due process of law, to-wit: the liberty of maintaining, erecting and displaying and permitting to be maintained, erected and displayed billboards, so constructed as not to endanger the safety of the public, although exceeding in dimensions, and otherwise, the limitations attempted to be imposed by the aforesaid ordinances, thus depriving your orator of the liberty to carry on a lawful business, without unreasonable restrictions and depriving the said owners,
28 lessees and occupants of the liberty of making a beneficial and profitable use of their property.

17. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States in that they deprive your orator of its property without due process of law and without just compensation.

18. Because said ordinances violate the provisions of Article V of the Amendments to the Constitution of the United States, in that said ordinances were not intended to regulate the construction and maintenance of billboards in the City of St. Louis, nor to impose reasonable restrictions on the construction thereof, in the exercise

of the police power of the city, but to destroy the property of your orator and deprive it of the use thereof without just compensation.

19. Because said ordinances violate Article III, Section 26, paragraph 14, of the Charter of the City of St. Louis, in that they do not encourage or maintain the good government of the City, its trade, commerce or manufacture, but are inconsistent with the laws and Constitution of the State of Missouri and the broad grant of police power under said Article III, Section 26, Paragraph 14, cannot confer upon the City of St. Louis any power not in harmony with the Constitution and laws of Missouri, as expressly provided in Article IX, Section 23.

20. Because said ordinances violate the provisions of Article II (known as the Bill of Rights), Section 30, of the Constitution of the State of Missouri, in that they constitute a taking of the property of your orator without due process of law.

21. That the provisions of said pretended ordinance amount to the taking of the property of your orator for an alleged public use without just or any compensation, in violation of Section 21 of Article II of the Constitution of Missouri.

22. That said pretended ordinance, if enforced, will be retrospective in its operation and will deprive your orator of its property lawfully acquired prior to the passage of said pretended ordinance, in violation of Section 15 of Article II of the Constitution of Missouri.

X.

Your orator further shows unto your Honor that a large number of the said billboards and signs heretofore constructed by it have been erected in conformity with ordinances under permits and licenses issued by the duly constituted authorities, officers and agents of the City of St. Louis, and that your orator has paid the City of St. Louis large sums of money for said permits and licenses; and your orator further avers that in each and every instance where it has erected new billboards, or repaired those in need or repairs, it has at all times first tendered to the said City of St. Louis, its officers and agents, all lawful fees required by the valid ordinances of the City of St. Louis and no billboards or signs have ever at any time been erected or repairs made by your orator except with notice to and under the immediate observation of the City of St. Louis, its officers and agents, and at all times their attention has by your orator been directed to the manner in which said work was being done and their advice was sought and welcomed, and no billboard or sign has ever been erected by your orator, or repairs made thereon other than in a thoroughly substantial, safe, permanent and workmanlike manner, and in strict compliance with all the valid ordinances of the City of St. Louis.

XI.

Your orator further shows unto your Honor that all its said billboards and signs in the City of St. Louis are at the present time in a thoroughly safe condition and in good repair; that the same have

been constructed in accordance with designs and specifications prepared by competent engineers and so as not to be or become dangerous and so as not, in any way to increase hazard from fire; that said billboards will safely withstand a wind pressure of thirty pounds per square foot, in either direction, which is the assumed wind pressure specified by the building ordinances of the said City of St. Louis for the frames of steel skeleton buildings and corresponds to a velocity of wind of eighty-three miles per hour, which is a greater velocity than any of record in said City of St. Louis; that well-known architects and engineers who have examined the construction of said billboards declare the same to be safe, secure and well built.

That to further show the manner in which all said billboards are constructed your orator shows unto your Honor a blueprint, and specifications, in accordance with which all said billboards have been constructed, together with seven pictures of certain of said billboards now in use by your orator in the City of St. Louis, which said blueprint, specifications and pictures are hereto attached, marked Exhibits A, B, C, D, E, F, G, H, I and J, and to which your orator refers.

31 XII.

Your orator further shows unto your Honor that defendant, the Commissioner of Public Buildings of the City of St. Louis, has repeatedly refused and still refuses to issue permits to your orator for the construction or repair of your orator's said billboards and signs in the City of St. Louis in accordance with valid ordinances of the City of St. Louis, and has declared his intention of enforcing or attempting to enforce said pretended ordinance and each and every provision thereof, and to require your orator to tear down all said billboards and reconstruct the same in accordance with the provisions of said pretended ordinance; that to tear down and reconstruct all of said billboards and signs as required by the terms of said pretended ordinances your orator would be compelled to pay the City of St. Louis a large sum of money in fees for permits, and greatly in excess of fees required for any other class of buildings, repairs or improvements in the city of St. Louis; that it would also be compelled to tear down and destroy all the billboards and signs which it had erected in accordance with permits issued by the City of St. Louis before the passage of said pretended ordinances; that in rebuilding, in accordance with the provisions of said pretended ordinance, it will be put to great expense and loss; that in rebuilding, in accordance with the provisions of said pretended ordinance, the total number of square feet of space now used by your orator would be reduced by about thirty-five per cent to forty per cent; that by reducing the size of said billboards to the height and length required by said pretended jordinance the face or posting surface thereof would be far less than
32 that required for said standardized advertising and the entire line of said advertising would be a total loss to your orator; that in addition to the great loss and shrinkage many of your orator's contracts would be forfeited and canceled and your orator subjected to heavy damages for not fulfilling them; that under

the provisions of said pretended ordinance no billboard can be erected on a lot with a frontage of thirty feet because said boards are not allowed to extend nearer than fifteen feet of a boundary line and in very many instances your orator cannot, because of the unreasonable provisions of said pretended ordinance, utilize the same for billboard advertising; that in addition to the great loss your orator will sustain by reason of the loss of so large part of its business and its inability to use at all many of the lots now leased, it will be required to pay under its outstanding leases the same rental to owners that it has heretofore paid; that it is therefore impossible for your orator to continue in business and comply with said pretended ordinances; that if said pretended ordinances are upheld and enforced, your orator will be prevented from increasing its business in the City of St. Louis and will be deprived of its entire plant and business and its property will be taken and destroyed without just compensation therefor; that it is impossible for your orator to comply with the provisions of said pretended ordinances and carry out the contracts now existing, because said boards would not contain sufficient surface for posting standardized advertising nor could your orator, by reason of the great shrinkage which would result from a compliance with said pretended ordinance, carry on the lawful business in which it is now engaged.

33 XII.

That your orator has in all instances when it desired to erect a new billboard or sign or make needed repairs thereon first submitted proper designs and tendered all lawful fees required by the valid ordinances of the City of St. Louis to the said Building Commissioner and requested him to issue permits therefor, but he has repeatedly refused, and still refuses, to issue such permits, notwithstanding such offers and tenders to him by your orator therefor; that it is now being threatened by defendants, who declare that said pretended ordinances will be enforced, and your orator has received from the defendant, the said Building Commissioner of the City of St. Louis, notices in writing declaring his intention to proceed immediately, or within three days from the 27th day of January, 1914, to tear down and destroy each and every one of the said billboards and signs of your orator in the City of St. Louis, unless your orator, before the expiration of said three days, tears down or reconstructs the same, in accordance with the terms of said pretended ordinance, and your orator shows that all of said notices are in the same language save only as to locations of the properties, on which said billboards stand, which said notice is in words and figures as follows, to-wit:

"#4056-66 Olive St.

Owner of Bill Board.

STATE OF MISSOURI,
City of St. Louis, ss:

CITY OF ST. LOUIS, MO., *Jan.* 23, 1914.

To St. Louis Poster Adv. Co., Greeting:

34 Take notice That a certain billboard, having a surface of more than twenty-five square feet, erected by you and which you are now maintaining on a certain parcel of ground, owned by Frank A. Ruf, known as lot number as below in City Block number 3924 and in the City of St. Louis, has been examined by this department and found to have been erected by you in direct violation of Section Four Hundred and Ninety-eight of the Revised Code of 1912, of the City of St. Louis, in the following respects, namely, that said billboard was erected without a permit from this department and without its approval; that said billboard exceeds 500 square feet in area; extreme height above the ground exceeds 14 feet; has a space of less than 14 feet between lower edge of board and ground; is less than 15 feet distant from nearest street and less than 6 feet distant from nearest building (lot situated at the S. E. Corner of Sarah and Olive streets, and having a frontage of 152 feet, more or less, on the south line of Olive st.).

Therefore, Acting under and by virtue of authority in me vested, by Sections Four hundred and ninety-eight and Five hundred of the Revised Code of 1912, of the City of St. Louis, I hereby command you to remove the said billboard from the said lot of ground within three days, next, immediately after the service of this notice upon you, or that you take down said billboard within three days and if you desire to maintain a billboard on said lot, procure a permit from this department to re-erect same or to so change or alter said billboard as to location or manner of construction or both as will cause it to fully comply with all of the requirements of Section Four hundred and ninety-eight of said Revised Code, a copy of which is hereto attached and made a part hereof.

Respectfully,

J. N. McKELVEY,
Commissioner of Public Buildings."

35 That in no instance have the defendants, or any of them, inspected or pretended to inspect, said billboards or signs, or any of them, with a view to determine whether or not the same are in need of repairs or in a dangerous condition, nor have the defendants, or either of them, claimed that said billboards or signs, or any of them, are in an unsafe or dangerous condition, or that the same, or any of them, are, as a matter of fact, in an unsafe condition; that your orator has never been notified by said defendants, or any of them, that said billboards or signs were or are in an unsafe condition, or in need of repairs, but, notwithstanding the absolutely safe condition of said billboards and signs, said defendant, the Building Commissioner, is now threatening and proceeding to knock down, demolish and destroy, by force of arms, the said property of your orator, giving as his only reason therefor that your orator has failed

to comply with the said pretended ordinances; that said defendant, the said Building Commissioner, now has a large force of men at work tearing down and destroying your orator's said property and declares that it is his intention to so proceed with tearing down said billboards and signs, until every one of the same has been torn down; that your orator has forbidden said defendants, and each of them, to interfere with or damage its property, but defendants have threatened to, and still threaten to, and declare they will, arrest your orator, its officers and agents, if in any manner they, or any one of them, resist defendants, or attempt to prevent them from so demolishing and destroying, by force of arms, all your orator's said billboards and signs, and your orator shows that its said property is being so destroyed, ruined and demolished by said defendant,
36 the Building Commissioner of the City of St. Louis, without any compensation therefor and in total disregard of its rights under the Constitution and laws of the United States and of the State of Missouri.

XIV.

Your orator further shows unto your Honor that it is informed and believes, and therefore charges that Henry W. Kiel, Mayor of the City of St. Louis, has directed the Commissioner of Public Buildings to destroy and tear down the property of your orator, unless it complies with the unreasonable, unnecessary and illegal terms and conditions of said pretended ordinances, within the time required in said notice given by said Building Commissioner; that said Building Commissioner and police officers of the City of St. Louis have expressed their determination and threat to enforce said unreasonable, illegal and unnecessary provisions of said pretended ordinances to the great injury, loss and utter ruin of your orator.

XV.

Your orator further shows unto your Honor that unless the said City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, who are defendants to this bill of complaint, are restrained by the injunction of this honorable Court from proceeding to tear down the said billboards and signs of your orator and from enforcing against your orator the provisions of said pretended ordinances, that the business of your orator will be irretrievably ruined, all the property of your orator torn down and destroyed, without due process
37 of law or just compensation therefor, its profits dissipated and the means of livelihood of those employed by your orator, will be taken away and your orator will suffer great and irreparable damage in the destruction of its said billboards, its entire plant will be rendered valueless and it will be unable to comply with and perform the terms of its said contracts, entered into with its several customers and its entire business will be a total loss; it being, for the several reasons herein stated, absolutely impossible for it to remain in business and comply with the terms of said illegal, unreasonable and oppressive ordinances; and that your orator has no adequate remedy at law.

XVI.

Inasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings of the City of St. Louis, and William Young, Chief of Police of the City of St. Louis, who are made parties defendant hereto, may each be required to make full, true and perfect answer hereto, but not under oath, answer under oath being hereby waived; that this Honorable Court may inquire into, investigate and ascertain the truth of the allegations herein contained; that upon the hearing hereof this Honorable Court may find and decree that each of the sections of said ordinances, hereinbefore set forth, are null, void, unconstitutional and of no effect; that the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings of said City of St. Louis, and William Young, Chief of Police of said City of St. Louis, and the officers, attorneys, agents and servants and each of them, may be forever re-
38 strained and enjoined from in any way interfering with, preventing the erection, repair or reconstruction of, removing, damaging or destroying the said billboards and signs of your orator and from interfering with the maintenance by your orator of said billboards and signs, or any of them, in a safe and permanent condition; and that your orator may have such other and further relief in the premises as the nature of its cause may require and to your Honor shall seem meet and as in duty bound your orator will ever pray.

Your orator further prays that a temporary injunction or restraining order may be issued by this Honorable Court, restraining the said defendants, and each of them, their officers, agents, attorneys, employés and servants from demolishing or further demolishing, tearing down, damaging or interfering with the maintenance and preservation of the said billboards and signs of your orator, in a safe and secure manner, until the final hearing or further order of this Honorable Court.

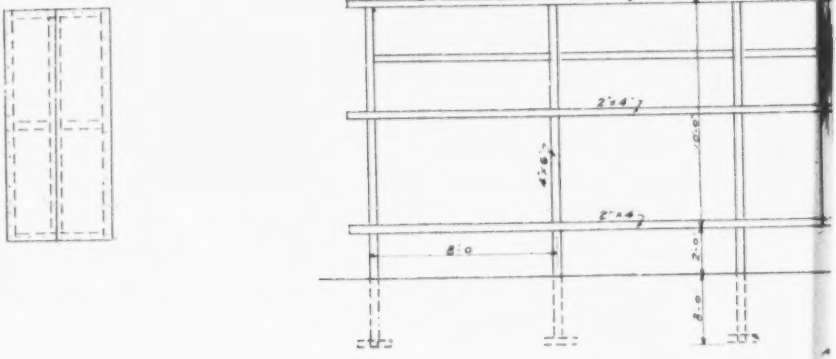
May it please your Honor to grant unto your orator a writ of subpœna to be directed to the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings of the City of St. Louis, and William Young, Chief of Police of the City of St. Louis, therein and thereby commanding them and each of them, at a certain time and under a certain penalty, therein limited, personally to appear before this Honorable Court and there and then full, true, direct and perfect answer make to all and singular the
39 premises, and further to stand to, perform and abide such further order, directions and decree therein as to your Honor shall seem meet.

ST. LOUIS POSTER ADVERTISING CO.,
Complainant.

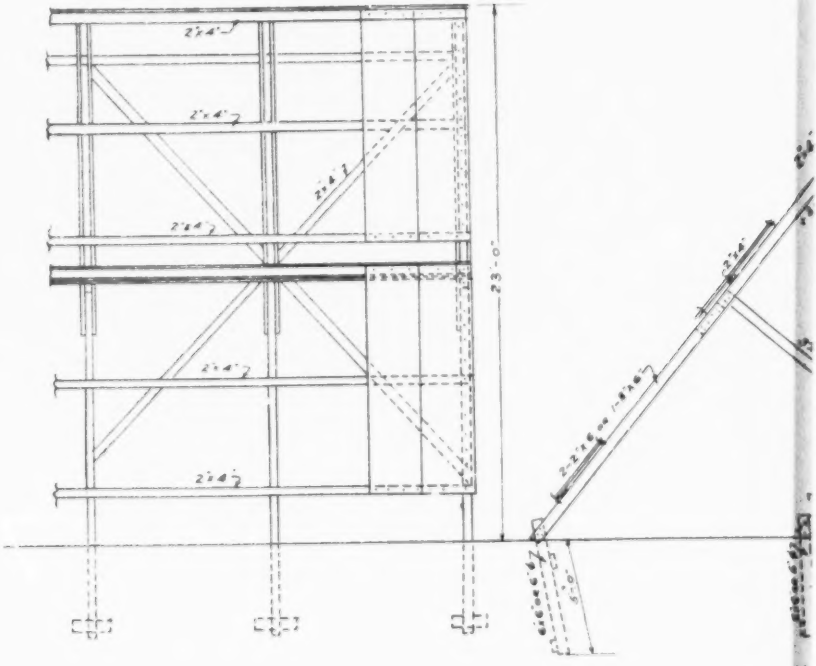
MARION C. EARLY, *Solicitor for Complainant.*

MARION C. EARLY,
Of Counsel.

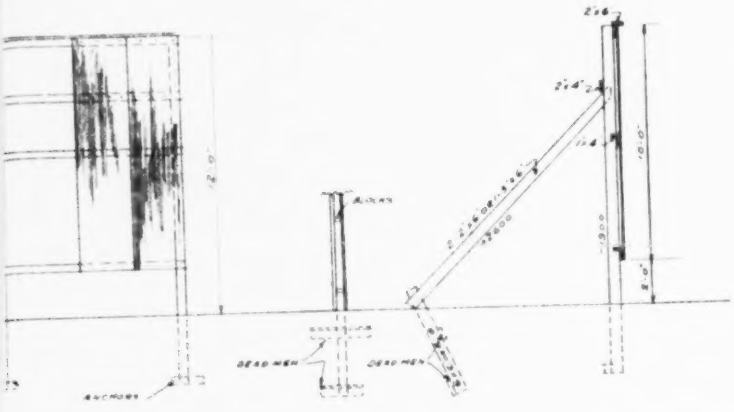
Exhibit Q.



SCHE



·SCHEME·B
1/4"·1'-0"



SCHEME ·A·
1/4" = 1'-0"

"NOTE"

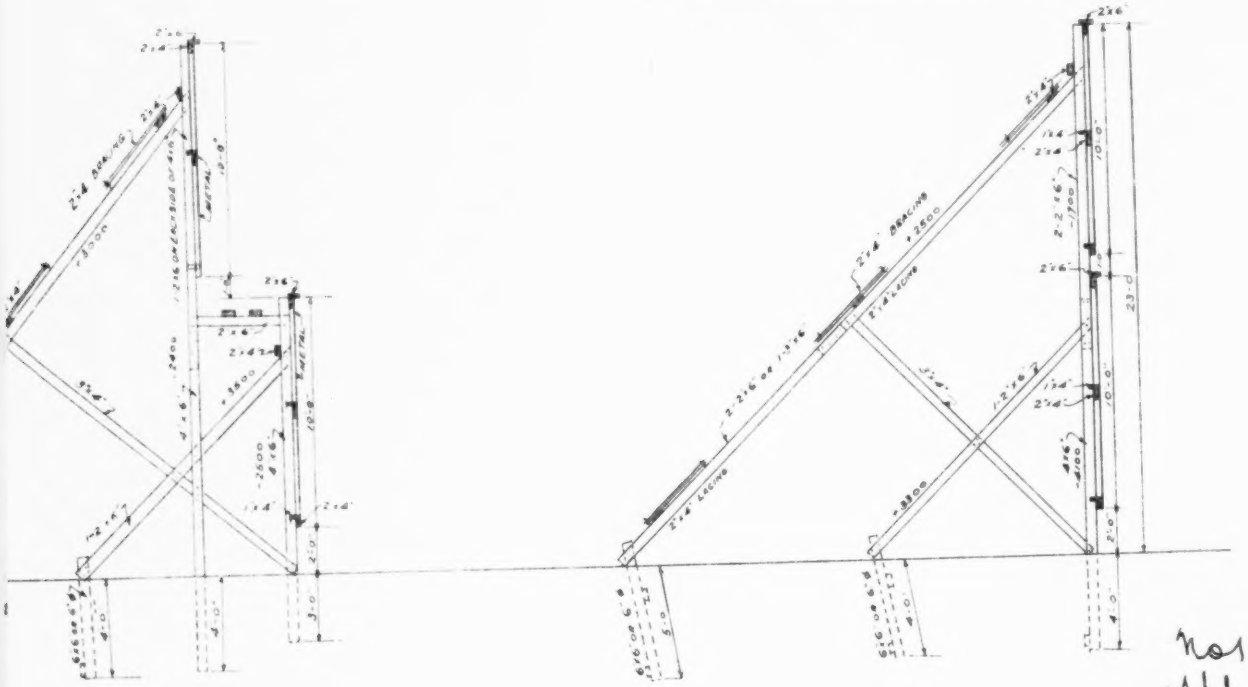
ALL LUMBER TO BE SOUND YELLOW PINE

STRESSES FIGURED FOR A WIND PRESSURE OF 30" PER □'
OR A WIND OF 83 MILES PER HOUR

STRESSES AND SIZES COMPILED BY
MAURAN- RUSSELL & CROWELL -ARCHTS-

BILLBOARD· CONSTRUCTION·
FOR
·ST·LOUIS·POSTER·ADV·CO·

E A R AUG 18 1911



·SCHEME·C·
1/4" = 1'-0"

No 1014.
Sth. P.a. 6.
City of St Louis
etal.
} b 40

STATE OF MISSOURI,
City of St. Louis,
Eastern Division of Eastern District of Missouri:

Peter J. McAliney, being duly sworn, deposes and says that he is the President of St. Louis Poster Advertising Company, the above-named complainant that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(Signed) PETER J. McALINEY.

Subscribed and sworn to before me this 30th day of January, 1914.
[SEAL.] MYRTLE B. WOOD,
Notary Public, City of St. Louis, Mo.

My commission expires February 17, 1916.

(Here follows diagram marked p. 40.)

41 EXHIBIT B.

Specifications.

For the construction, sizes and quality of timbers used in the construction of billboards by the St. Louis Poster Advertising Company.

Anchor Posts. All anchor posts placed in the ground for securing braces to brace billboards shall be 6″ x 6″ white cedar, round or square. The anchor post shall extend not less than 4′ 0″ nor more than 5′ 0″ into the ground, with pine cross-pieces or dead men securely nailed parallel with and below the surface of the ground, one dead man or tie to be attached to and securely nailed to the anchor on the front side, not less than 12 or more than 18 inches below the surface of the ground; the second dead man or tie piece to be nailed in a like manner to the rear side of the anchor at the bottom of the anchor, with thirty-penny nails to same to prevent them from being pulled out of the ground.

Uprights. The upright members for securing cross-rails to sheath to shall be 4″ x 6″ cypress; shall extend from a depth of 4′ 0″ in the ground to the height of sheathing and set not more than 7′ 11″ on center.

Cross-Rails. Cross-rails for nailing sheathing shall be of 2″ x 4″ No. 1 Common Yellow Pine, securely spiked to uprights with 30-penny nails. The lower rail shall set not less than 2′ 0″ about the surface of the ground and all rails above about 5′ 0″ on center.

Braces. Secured by nailing with thirty-penny nails to uprights about two feet from their top and to cedar anchor posts, shall be of 2-2″ x 6″ pieces spiked together with thirty-penny nails, No. 1 Common Yellow Pine. The long braces on double-deck boards
42 will be tied together for stiffening with 2″ x 4″ No. 1 Common Yellow Pine, bracing securely nailed with 30-penny nails on top of braces, midway between anchor post and contact with upright, about 2 feet from top of upright, and further stiffened by lateral braces of 2″ x 4″ No. 1 Yellow Pine nailed with 30-penny nails in lace or cross-fashion throughout length of billboard. All long braces to be supported in the center by nailing a 3 x 4 No. 1 Yellow Pine brace thereto with 30-penny nails and to the corresponding 4 x 6 upright post at top of ground.

All of the above section to be well spiked together with thirty-penny nails. All facings shall be of galvanized steel built in panel form and securely nailed to front of structure and fastened to front structure by being securely nailed to rails and uprights and divided into 25-foot panels framed and rim faced with 6-inch crown moulding securely nailed to the front of the galvanized steel facing or posting surface.

(Here follow photographs marked pp. 43 to 50, incl.)

Exhibit C.

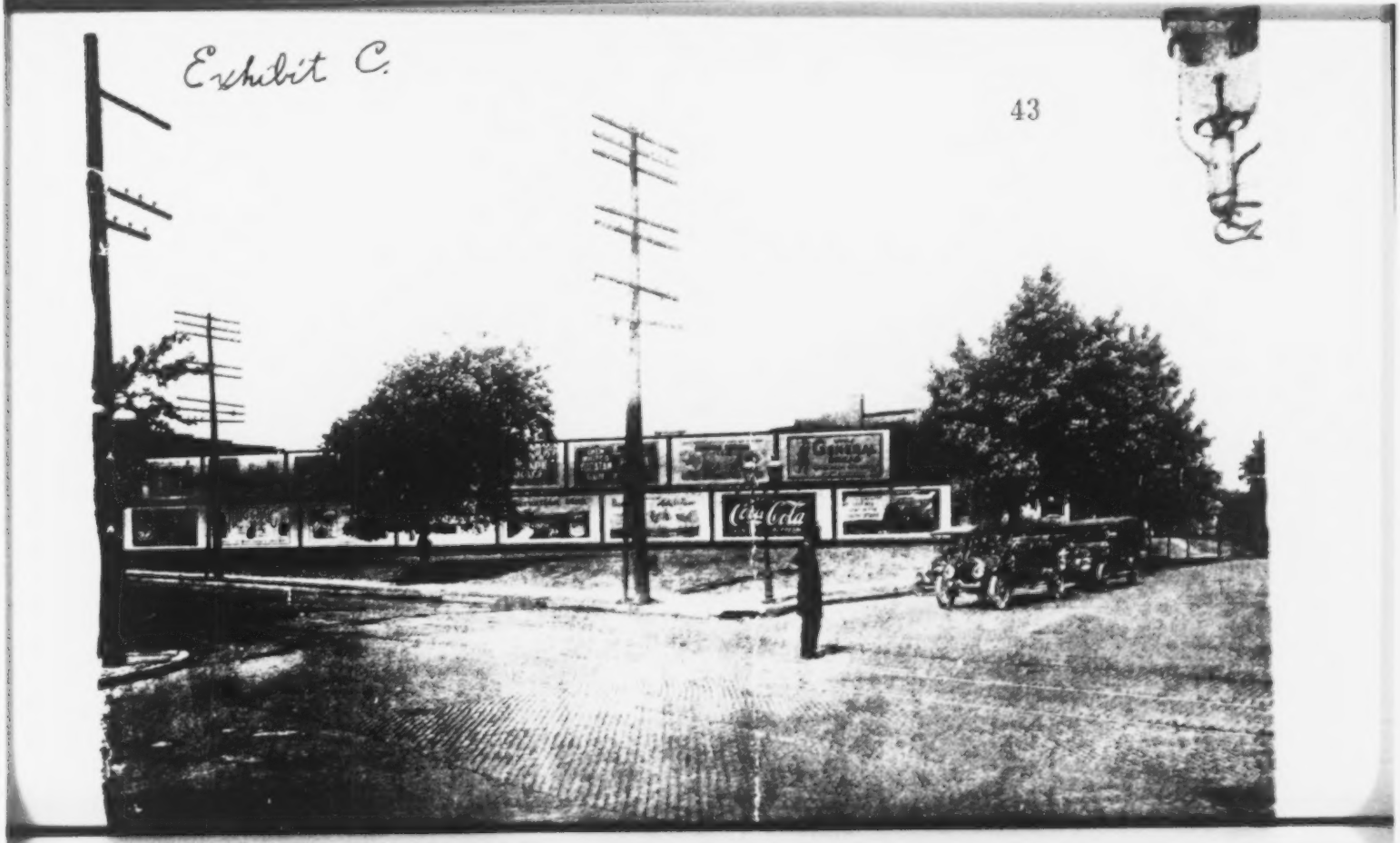


Exhibit D.

Exhibit E.

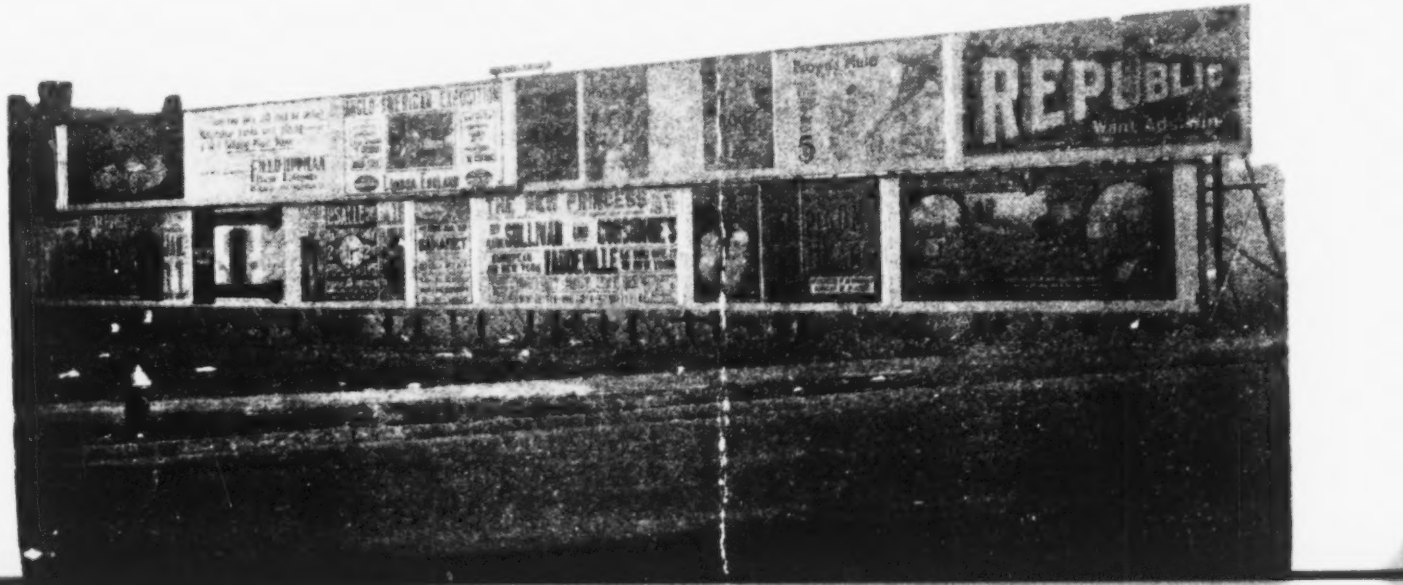


Exhibit F.

Exhibit G.

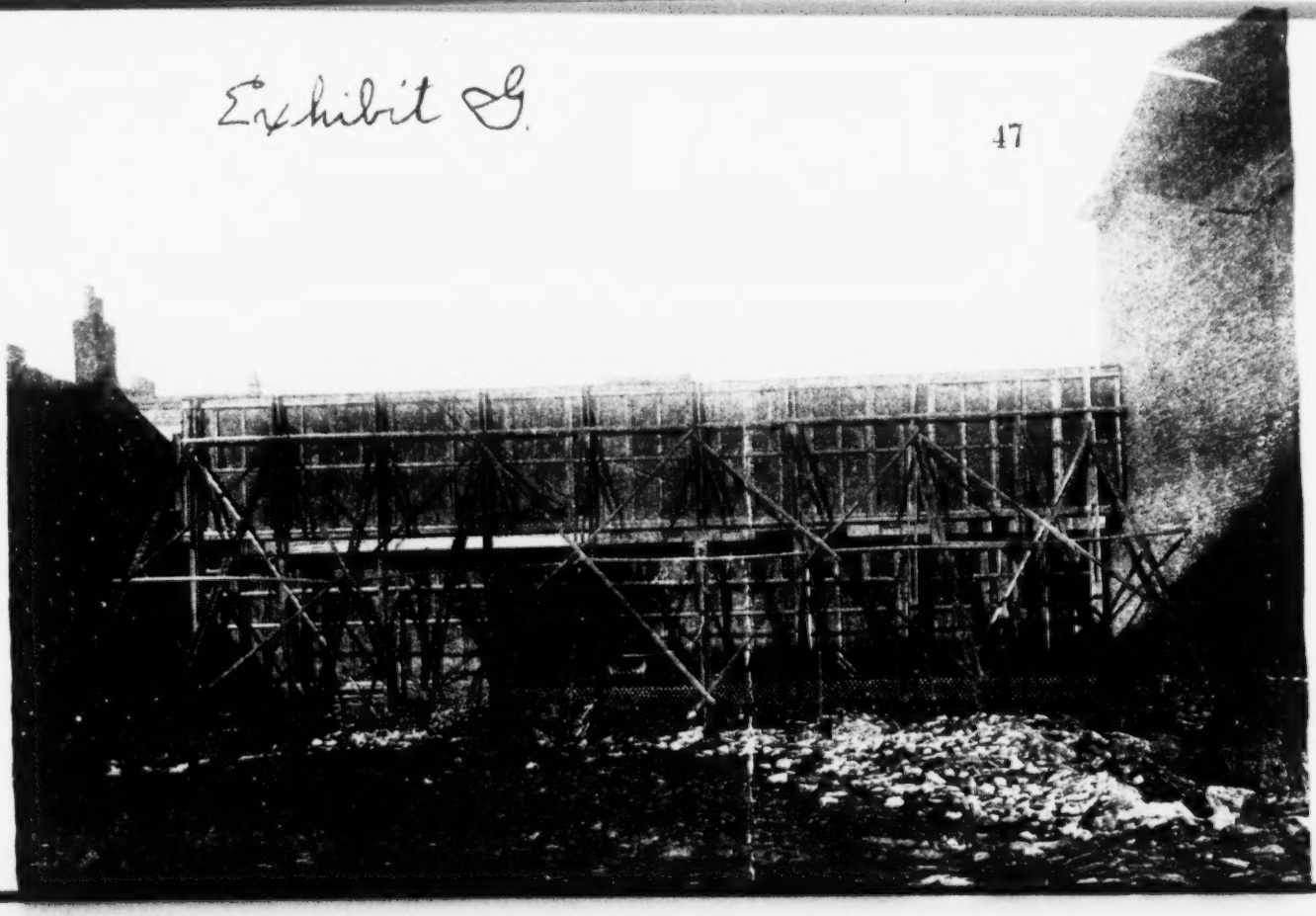


Exhibit A.

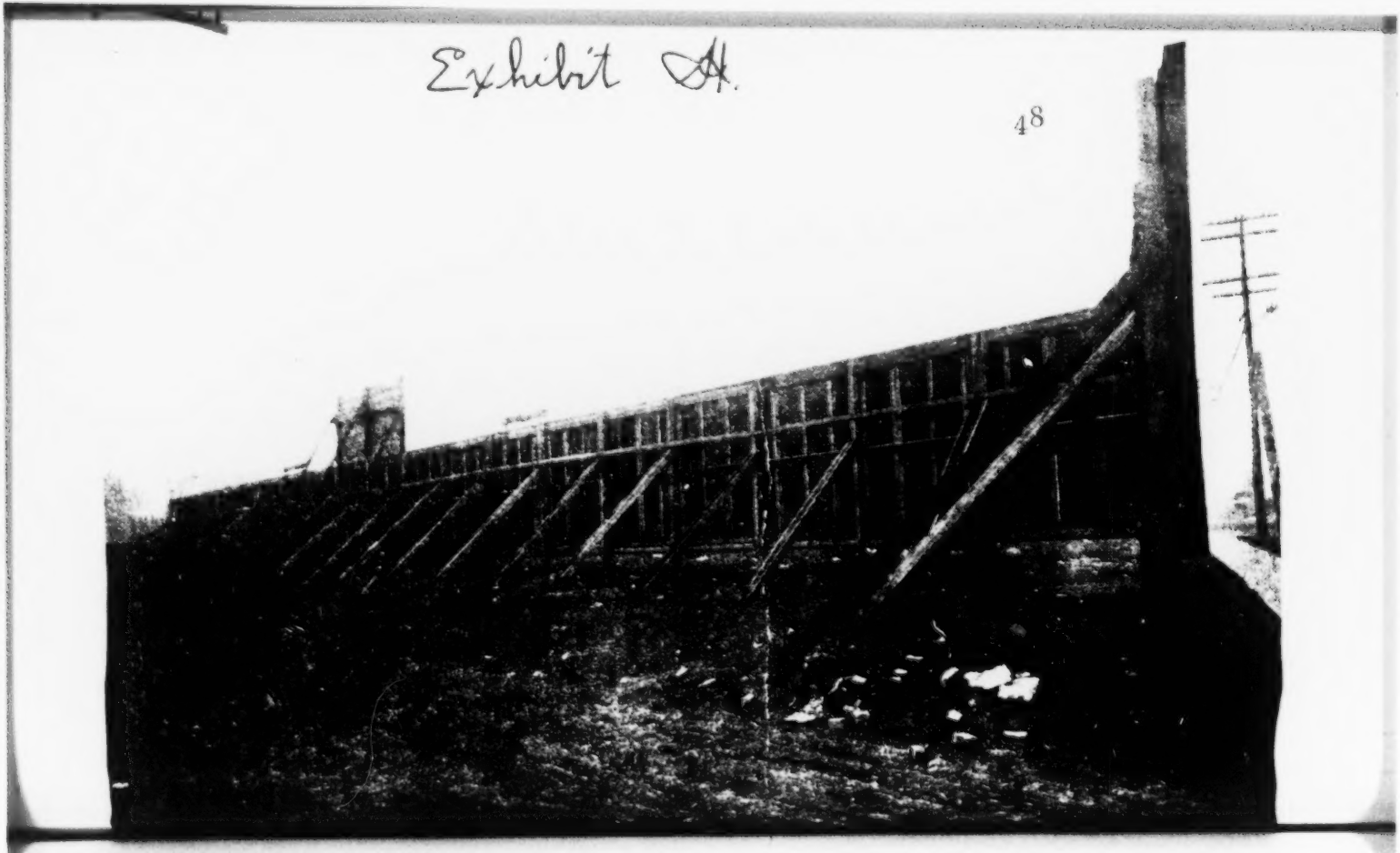
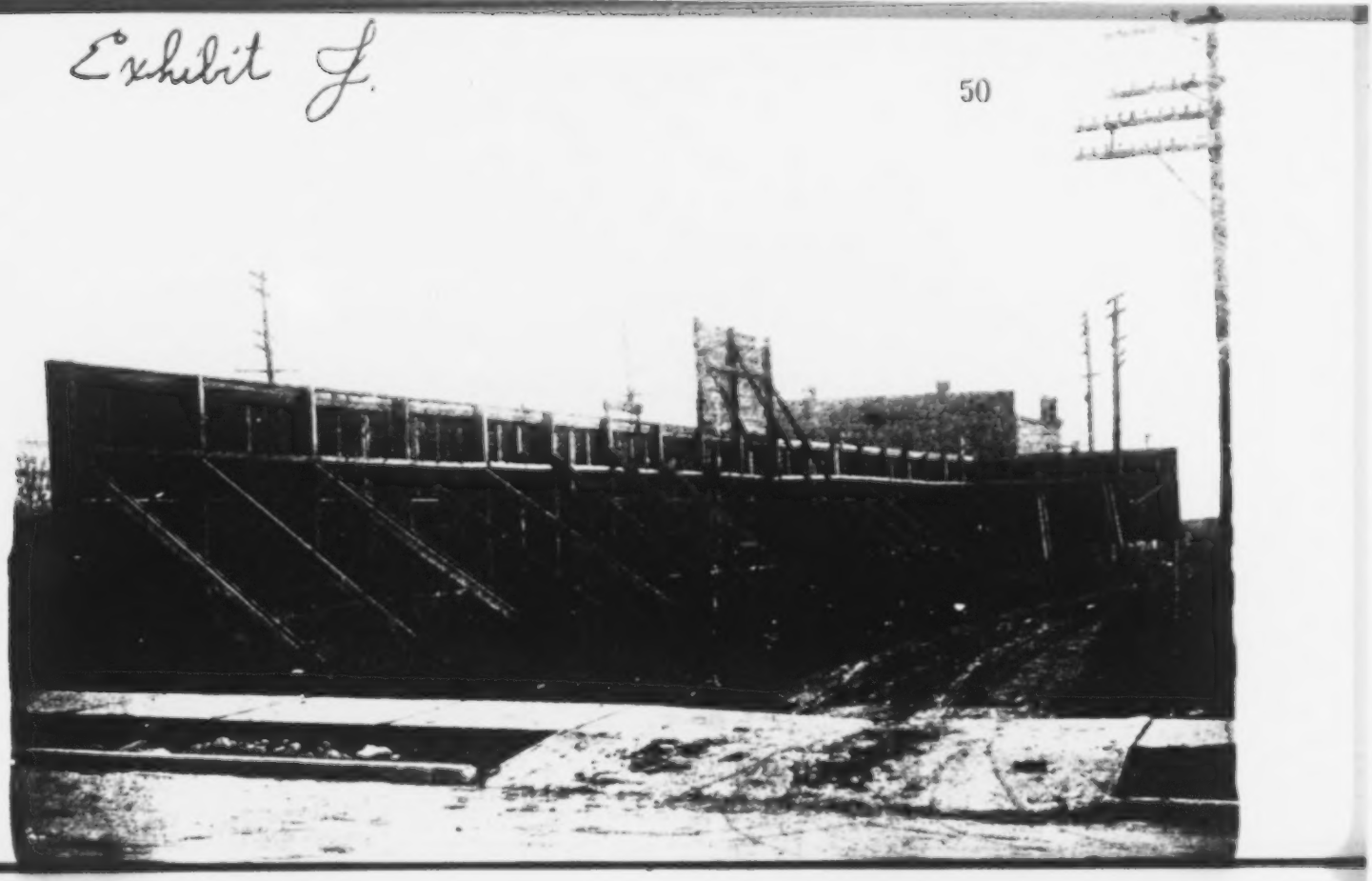


Exhibit L.

Exhibit L.



51 (*Motion to Dismiss.*)

In the District Court of the United States, Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Motion of Defendants to Dismiss Complainant's Bill.

Now come the defendants in the above entitled cause and respectfully move the Court to dismiss the bill of complainant herein, for the following reasons, to-wit:

1. Said bill is wholly without equity.

2. Said bill fails to state facts sufficient to entitle the complainant to the relief prayed for, or to any relief.

3. Said bill raises but one question, namely, the validity of the ordinances of the City of St. Louis set out in said bill, which said ordinances have been declared to be valid by the Supreme Court of the State of Missouri in the case of St. Louis Gunning Advertising Company vs. The City of St. Louis, 235 Mo., page 99, and said decision was a decision of the court of last resort of the State of Missouri finally adjudicating that said ordinances are a valid and con-
52 stitutional exercise of the police power of the State of Missouri, through the agency of the City.

4. It appears upon the face of the bill of complainant herein that the ordinances of the City of St. Louis set out in said bill are not a violation of any clause of the constitution of the United States.

WM. E. BAIRD,
TRUMAN P. YOUNG,
Attorneys for Defendants.

Endorsed: "Filed Feb'y 13th 1914, W. W. Nall, Clerk."

53 (*Final Decree.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, a Corporation, Complainant,
vs.
CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; James N. McKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Now at this day come the parties hereto by their respective solicitors, and this cause coming on to be heard upon the joint motion of said defendants to dismiss the bill of complaint in this cause, the same is argued by counsel and submitted to the Court; and the Court being now fully advised in the premises doth

Order that said motion to dismiss be and the same is hereby sustained; and the said complainant by its solicitors now in open court declining to plead further herein, it is now

Ordered, adjudged and decreed that the bill of complaint in this cause be and the same is hereby dismissed at the costs of the said complainant, for which costs let execution issue as at law.

February 19th 1914.

DAVID P. DYER, *Judge.*

Endorsed: "Filed Feb'y 19th 1914. W. W. Nall, Clerk."

54 (*Petition for Appeal.*)

In the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1913.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Petition for Appeal.

The above complainant, conceiving itself aggrieved by the final decree of the court rendered on the final hearing of this case and entered on the Nineteenth day of February, 1914, hereby appeals from the said final decree for the reasons more fully set out in the

assignments of error filed herein, and the said complainant prays that this appeal to the Supreme Court of the United States may be allowed, and that a transcript of the record, proceedings and papers upon which said final order and decree was made and entered, duly authenticated, may be sent to the Supreme Court of the United States.

And, now, at the time of the filing of this petition for appeal, the said complainant, through its counsel, files its assignments of error setting up the error asserted and intended to be urged in the Supreme Court of the United States.

And your petitioner will ever pray.

Dated this 21st day of March, 1914.

MARION C. EARLY,
Solicitor for Complainant.

MATT. G. REYNOLDS,
Of Counsel.

Endorsed: "Filed Mar. 21st 1914, W. W. Nall, Clerk."

55 *(Order Allowing Appeal.)*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Now at this day comes the said complainant by solicitor and counsel and files and presents to the Court its assignment of errors and its petition for an appeal in this cause to the Supreme Court of the United States; upon due consideration whereof, the court doth

Order that said appeal be granted as prayed, that said complainant within ten days from this date give an appeal bond for costs in the sum of Five hundred Dollars, and that the Clerk of this Court make and certify to the Clerk of said Supreme Court of the United States a complete transcript of the record and proceedings in this cause. And that citation issue.

Bond Approved and filed.

March 21, 1914.

DAVID P. DYER, *Judge.*

Endorsed: "Filed Mar. 21st 1914, W. W. Nall, Clerk."

56 (*Appeal Bond and Approval of Same.*)

Bond for Appeal.

Know all men by these presents, that we, St. Louis Poster Advertising Company, a corporation, as principal and American Surety Company of New York, as surety are held and firmly bound unto the City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police, in the full and just sum of Five Hundred ($500.00) dollars to be paid to the said City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, commissioner of Public Buildings, and William Young, Chief of Police, their successors or assigns: to which payment well and truly to be made, we bind ourselves, our successors or assigns jointly and severally by these presents.

Sealed with our seals, and dated this 12th day of March in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately at the September Term, 1913 of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit pending in said court between St. Louis Poster Advertising Company, complainant and City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, commissioner of public buildings, and William Young, chief of police, defendants, judgment was rendered against the said St. Louis Poster Advertising Company, complainant, and the said St. Louis Poster Advertising Company, complainant has obtained an appeal from the said court to reverse the judgment and decree in the aforesaid suit, and a citation
57 directed to the said City of St. Louis, Henry W. Kiel, Mayor, James N. McKelvey, Commissioner of Public Buildings, and William Young, Chief of Police citing and admonishing them to be and appear in the Supreme Court of the United States at the City of Washington, D. C., sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said St. Louis Poster Advertising Company, complainant, shall prosecute said appeal to effect, and answer all damage and costs if it shall fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

ST. LOUIS POSTER ADVERTISING COMPANY,
By J. H. BRINKMEYER,
Its Acting President, Secretary, and Agent, Acting in Its Behalf.

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By EMMETT M. MYERS,
Resident Vice-President.

Attest: O. L. KINCHELOE,
Resident Assistant Secretary.

Approved by
DAVID P. DYER, *Judge.*

Endorsed: "Filed Mar. 21st 1914. W. W. Nall, Clerk."

58 (*Assignment of Errors.*)

In the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1913.

In Equity. No. 4256.

ST. LOUIS POSTER ADVERTISING COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. MCKELVEY, Commissioner of Public Buildings, and William Young, Chief of Police, Defendants.

Assignment of Errors.

Comes now the St. Louis Poster Advertising Company, complainant, through its counsel, in this case, and says:

That in the record and proceedings in this case there is manifest error, prejudicial to the rights of complainant, and files the following assignment of errors on which it relies in this, to-wit:

1. The court committed error in holding that complainant's bill was without equity.

2. The court committed error in holding that complainant's bill does not state facts sufficient to entitle it to the relief prayed for, or to any relief.

3. The truth of the allegations in complainant's bill being admitted, the court committed error in holding that complainant was not entitled to the relief prayed for, or to *to* any relief.

59 4. The court erred in refusing to strike out on motion of complainant paragraph three in defendants' motion to dismiss.

5. The court erred in refusing to hold upon the admitted facts that the ordinances of the City of St. Louis, set forth in complainant's bill were not an unreasonable, improper interference with the rights of private property and therefore in violation of the constitution of the United States and of the Constitution of the State of Missouri.

6. The court committed error in dismissing complainant's bill.

7. The court erred in making, rendering and entering its final decree in said cause in favor of the defendants and against the complainant.

8. The bill of complaint as submitted in said cause, entitled the complainant to the relief prayed for and the court committed error in not giving the relief as prayed.

9. The court erred in dismissing complainant's bill thereby depriving it of its liberty and property without due process of law and without just compensation in contravention of the Fifth Amendment to the Constitution of the United States.

10. The court erred in that the final judgment and decree dismissing complainant's bill justifies and constitutes a taking of complain-

ant's private property for public use, without just compensation, in violation and in contravention of the fifth Amendment to the constitution of the United States.

11. The court erred in holding that the said ordinance of the City of St. Louis No. 22022, section- 2, 14, 81, 82, 177, 178,
60 179, 180/ 181 and 182 of said ordinance and each of them, if enforced, does not constitute a taking of complainant's private property for public use without just compensation, in violation and contravention of the Fifth Amendment to the Constitution of the United States.

12. The court erred in holding that said ordinance of the City of St. Louis No. 22022, sections 2, 14, 81, 82, 177, 178, 179, 180, 181 and 182 and each of them if enforced, does not deprive compla-nan-of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

13. The Court erred in holding that Section 14, admittedly discriminatory against complainant in that it exacted a license fee for permits more than one hundred times greater than required for penits to erect any other kind of structures in the City of St. Louis, did not thereby deprive complainant of its liberty or property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

14. The court erred in that the final decree and judgment dismissing complainant's bill denies to it the equal protection of the laws, in violation and contravention of the Fourteenth Amendment to the Constitution of the United States.

15. The court erred in holding that the ordinances of the City of St. Louis No. 22022, section- 2, 14, 81, 82, 177, 178, 179, 180, 181 and 182 of said ordinance and each of them if enforced, does not deprive complainant of its liberty or property without due process of law, in violation and in contravention of the Fourteenth Amendment of the Constitution of the United States.

61 16. The Court erred in holding that said ordinances of the City of St. Louis, No. 22022 and sections 2, 14, 81, 82, 177, 178, 179, 180, 181 and 182 of said ordinance and each of them, if enforced, *does* not deny to complainant the equal protection of the laws, in violation and contravention of the Fourteenth Amendment to the Constitution of the United States.

17. The court erred in holding that Section 14, admittedly discriminatory against complainant in that it exacts a license fee for permits more than one hundred times greater than required for permits to erect any other kind of structures in the City of St. Louis, does not deny complainant the equal protection of the laws in violation and contravention of the Fourteenth Amendment to the Constitution of the United States.

18. The court erred in that it dismissed said bill of complaint for want of equity. The allegations of said bill presenting a cause for equitable intervention to stay the destruction of private property in contravention of the guaranties of the Fourteenth Amendment to the Constitution of the United States.

19. The court erred in holding that none of the provisions of the said ordinance constitute a violation of any of the rights of complainant under the Constitution of the United States or under the Constitution of Missouri or the ordinances of the City of St. Louis.

20. That Court erred in holding that each of the provisions of said ordinance was valid as the proper exercise of the police power of the City of St. Louis.

21. The court erred in holding that the classification of structures as contained in the definition of the term "Billboard" as used in said ordinance was justifiable and did not constitute a discrimination against the complainant and against the lawful use of private
62 property in violation of the constitution of the United States and the Constitution of the State of Missouri.

22. The court erred in rendering its order whereby the said bill of complaint was dismissed at complainant's costs for want of equity, and execution was ordered against complainant for costs.

23. The court erred in not sustaining complainant's bill and granting the relief prayed thereby preventing defendants from destroying and continuing to destroy by force of arms the private property of complainant without due process of law or just compensation in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and of Article 2, Sections 21 and 30 of the Constitution of Missouri and of Article 3, section 26 paragraph 14 of the Charter of the City of St. Louis as provided in Article 9, section 23 of the Constitution of Missouri.

For which matters and things the complainant prays that the order and judgment in this case may be reversed and set aside and that complainant may have the relief as prayed for in its Bill of Complaint.

Dated this 16th day of March, 1914.

MARION C. EARLY,
Solicitor for Complainant.

MATT G. REYNOLDS,
Of Counsel.

Received copy foregoing assignment of errors this 12th day of March, 1914.

WILLIAM E. BAIRD,
Solicitors for Defendants.

Endorsed: "Filed Mar. 21st, 1914. W. W. Nall, Clerk."

63 (*Clerk's Certificate.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true

and complete transcript of the record and proceedings (save as restricted by the præcipe of complainant-appellant for transcript hereinbefore set forth) in cause No. 4256, of St. Louis Poster Advertising Company, a corporation, Complainant, versus City of St. Louis, et al., Defendants, as fully as the same remains on file and of record in said cause in my office; and that the original Citation is hereto attached and herewith returned.

In Witness Whereof, I hereunto set my hand and affix the seal of said District Court, at office in the City of St. Louis, in the Eastern Division of the Eastern Judicial District of Missouri, this 3rd day of April A. D. 1914.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said District Court,
By IRVINE MITCHELL,
Deputy Clerk.

Endorsed on cover: File No. 24,165. E. Missouri D. C. U. S. Term No. 1014. The St. Louis Poster Advertising Company, appellant, vs. City of St. Louis, Henry W. Keel, mayor; James N. McKelvey, commissioner of public buildings, and William Young, chief of police. Filed April 13th, 1914. File No. 24,165.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1918.

No. [redacted]220&2

ST LOUIS POSTER ADVERTISING COMPANY,
Plaintiff in Error,

vs.

THE CITY OF ST LOUIS; HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings; and WILLIAM YOUNG, Chief of Police,
Defendants in Error.

No. 24,165.
No. 26,033.

In Error to the Supreme Court of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

CHARLES H. DAUES,
EVERETT PAUL GRIFFIN,
Attorneys for Defendants in Error.

J. W. STEELE & CO., 19 N. THIRD ST., ST. LOUIS

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 566.

ST LOUIS POSTER ADVERTISING COMPANY, Plaintiff in Error, vs. THE CITY OF ST LOUIS; HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings; and WILLIAM YOUNG, Chief of Police, Defendants in Error.	No. 24,165. No. 26,033.

In Error to the Supreme Court of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

STATEMENT.

This suit had its origin in the Circuit Court of the City of St. Louis. The appellant, St. Louis Poster Advertising Company, brought suit to enjoin the enforcement of certain ordinances of the City of St. Louis

relating to "bill-boards." The persons sought to be enjoined were The City of St. Louis, Henry W. Kiel, the Mayor, James N. McKelvey, the Commissioner of Public Buildings, and William Young, the Chief of Police. The petition, exclusive of exhibits, consists of twenty-two printed pages and is set out in full in the Transcript of the Record, pages 5 to 27, inclusive.

The defendants filed a demurrer to the petition and, after argument in the Circuit Court, the demurrer was sustained by the Court.

The demurrer to plaintiff's petition is to be found on page 27 of the Transcript of the Record.

The grounds of demurrer on which defendants relied are as follows:

1. That the petition fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against defendants, and fails to state facts sufficient to entitle plaintiff to relief prayed for, or to any relief.

2. That the petition is wholly without equity.

3. That said petition raises but one question, namely, the validity of the ordinances of the City of St. Louis set out in said petition, which said ordinances have been declared valid by the Supreme Court of the State of Missouri in the case of The St. Louis Gunning Advertising Company v. The City of St. Louis, 235 Mo. 99, and upon the principle of *stare decisis* the validity of said ordinances is not now open to question in this court.

After the demurrer filed by the defendants was sustained, plaintiff declined to plead further and final judgment was entered in favor of the defendants, and

dismissing plaintiff's petition. (Rec., pp. 27, 28.) From this judgment plaintiff duly appealed to the Supreme Court of Missouri (Rec., p. 28) and the case was duly assigned to Division No. 1 thereof. The case was argued and briefed in Division No. 1 and the judgment of the Circuit Court was affirmed, the opinion in the case being written by Commissioner Brown, in which all of the judges of that Division concurred excepting Graves, J., who dissented.

In view of the fact that the case involved a reconsideration of the case of St. Louis Gunning Advertising Co. v. The City of St. Louis, *et al.*, 235 Mo. 99, decided *in banc*, the Court of Division No. 1 transferred the case to the Court *in banc*, where the case was again briefed and argued. The Court *in banc* adopted as the opinion of the Court *in banc* the opinion of Commissioner Brown filed in Division No. 1, and affirmed the judgment of the Circuit Court, Graves, J., alone dissenting. (Rec., p. 38.) This case is reported in 195 S. W. Rep., p. 717.

Plaintiff thereupon on the 30th day of May, 1917, filed a motion for a rehearing and a brief in support thereof in the Court *in banc* (Rec., p. 39), which motion was overruled on the 1st day of June, 1917. (Rec., p. 44.)

Thereafter, on June 21st, 1917, a writ of error was granted plaintiff from the Supreme Court of the United States to the Supreme Court of the State of Missouri and the case is accordingly now in this court for its determination.

POINTS AND AUTHORITIES.

I.

It is elementary that only facts well pleaded are to be considered in the determination of a demurrer. Evidence, affidavits in the nature of evidence, exhibits and conclusions of law are not to be considered.

Cyclopedia of Law, Vol. 31, pp. 335-6;
Pattison's Missouri Code Pleading (2nd Ed), Secs. 917, 925, 926.
Southern Chemical, etc. Co. v. Wolf, 48 L. A. Ann., 631; 19 So. 558;
Pomeroy v. Fullerton, 113 Mo. 440;
Hickory Co. v. Fugate, 143 Mo. 71, *l. c.* 79;
Lackawanna Coal & Iron Co. v. Long, 231 Mo., 605;
Donovan v. Beck, 217 Mo., *l. c.* 83;
State *ex rel.* Fenn v. McQuillin, 256 Mo. 693, *l. c.* 708.

Even statements made as of fact which are designed to show the invalidity of a statute, are not to be taken as true like other statements in a case. A public law cannot be thus confessed away.

State *ex rel* v. Aloe, 152 Mo. 466; 47 L. R. A. 393.

II.

In this case, the validity of the ordinances of the City of St. Louis known as the "bill-board" ordinances are attacked. These same ordinances were attacked in

the case of St. Louis Gunning Advertising Co. v. The City of St. Louis, *et al.*, which was likewise an injunction suit seeking to restrain the defendants from enforcing the ordinances aforesaid. The Supreme Court of Missouri, *in banc*, sustained the validity of these ordinances in a lengthy opinion written by Judge A. M. Woodson, consisting of one hundred printed pages, in which the Court thoroughly discusses the constitutionality and the validity of the bill-board ordinances, and disposes of all of the contentions raised by the appellant in the case at bar.

It will be noted that Sec. 209 of Ordinance 18964 was expressly repealed by Ordinance No. 22022, both of which are set out in plaintiff's petition and, therefore, presents a moot question only.

> See St. Louis Gunning Advertising Co. v. City of St. Louis, *et al.*, 235 Mo. 99.

Similar ordinances of Kansas City were upheld by the Supreme Court of Missouri *in banc*, in the case of Kansas City Gunning Advertising Co. v. Kansas City, 240 Mo. 659, regulating and controlling bill-boards, and the same ordinances were again upheld in the present case by the Court *in banc*.

> St. Louis Poster Advertising Co. v. The City of Louis, *et al.*, 195 S. W. Rep., p. 717.

The validity of similar ordinances in the City of Chicago were upheld by the Supreme Court of the United States in the case of Thomas Cusack Company v. Chicago, 242 U. S. 526.

ARGUMENT.

I.

This case comes to this Court on a writ of error sued out by plaintiff to the Supreme Court of Missouri, from a judgment in favor of defendants. The plaintiff in its petition has set out affidavits, has attached to its petition a number of exhibits, has pleaded other matters which are evidence and has also pleaded conclusions of law.

It is elementary, of course, that only facts well pleaded are to be considered in the determination of a demurrer. Evidence, affidavits in the nature of evidence, exhibits and conclusions of law are not to be considered.

This rule is well stated in the Cyclopedia of Law and Procedure, Vol. 31, page 333:

> "This rule that a demurrer is an admission of matters of fact does not extend to render it an admission of inferences or conclusions drawn therefrom even if alleged in the pleading, nor mere inferences or conclusions from facts not stated, nor conclusions of law, nor matters of evidence, nor surplusage and irrelevant matter."

In the case of

Pomeroy v. Fullerton, 113 Mo. 440,

the Court said, *l. c.* 453:

> "The exhibits filed with the petition form no part thereof and cannot be considered in determining its sufficiency on demurrer."

In the case of

Hickory County v. Fugate, 143 Mo. 71,

the Court said, *l. c.* 79:

> "In the determination of a demurrer we cannot look beyond the petition to any exhibits filed therewith to supply its defects."

In the case of

State *ex rel.* Fenn v. McQuillin, 256 Mo. 693,

the Court said, *l. c.* 708:

> "The general rule is that an exhibit attached to a petition is not so far a part of the petition itself as to save the petition from being bad on demurrer, even though if the petition were aided or eked out by the contents of the exhibit, it would be thus rendered good on demurrer instead of bad. And this is true even though the petition states that the exhibit is made a part of the petition."

Of course it is elementary that conclusions of law are not admitted by demurrer, nor are conclusions of the pleader on the facts constitutive of the cause of action admitted, nor are matters of inference and argument admitted by demurrer.

Thus, in the case of

Donovan v. Boeck, 217 Mo. *l. c.* 83,

it was held:

> "It (the demurrer) does not admit the soundness of conclusions of law in the plea, nor mere conclusions of the pleader on the facts constitutive of the cause of action.
>
> " 'In Dillon v. Barnard, 21 Wall. *l. c.* 437, it was held that a demurrer does not admit matters

> of inference and argument, however clearly stated.' 'The several averments of plaintiff in the bill as to his understanding of his rights,' says Field, Justice, 'and of the liabilities and duties of others under the contract, can therefore exert no influence upon the mind of the Court in the disposition of the demurrer.' ''

Again, in the case of

> Lackawanna Coal & Iron Co. v. Long, 231 Mo. 605, the Court said:
>
> "A demurrer admits facts pleaded only when they are well pleaded and are not absurd or impossible. It does not admit legal conclusions."

Again it has been held that statements made as of fact, which are designed to show the invalidity of a statute, are not to be taken as true like other statements in a case. A public law cannot be thus confessed away.

> State v. Aloe, 152 Mo. 466; 47 L. R. A. 393.

II.

Eliminating, therefore, the conclusions of law, the exhibits and the evidence set forth in plaintiff's petition, in the form of affidavits or otherwise, and considering only the facts well pleaded in plaintiff's petition, we find that its petition is simply an attack upon the validity of the same ordinances whose validity was passed upon in the case of St. Louis Gunning Advertising Company v. City of St. Louis, *et al.* That case, like the case at bar, was an injunction suit whereby the plaintiff who was engaged in the same line and character of business as the plaintiff in the case at bar, sought to restrain the defendants from enforcing

the ordinances aforesaid. In the case at bar the ordinances are attacked upon practically the same grounds as were the ordinances in the St. Louis Gunning Advertising Company case above referred to. That case was carefully and exhaustively briefed by both sides, and the Supreme Court of Missouri in an opinion by Judge Woodson (Vol. 235 Mo. Sup. Ct. Rep., p. 99), covering one hundred printed pages, exhaustively discusses the questions now presented by plaintiff's petition, and after a careful consideration of the entire case Judge Woodson held the ordinances now attacked in this case to be valid, and all of the Judges of the Supreme Court concurred in this opinion excepting Judge Graves, who dissented.

We feel that the validity of these ordinances is no longer open to question, and that as the Supreme Court of Missouri has passed upon this question and has written such a lengthy and exhaustive opinion upon the **very questions** presented in this case, that it would be useless for us to cite any further authorities in support of our contention, but we respectfully refer the Court to the decision by the Supreme Court of Missouri *in banc* in the case of St. Louis Gunning Advertising Company v. St. Louis, 235 Mo. 99. Before concluding this point I wish to quote the following excerpt from the opinion of the Supreme Court in the Gunning case as being very appropriate also to the case at bar:

> "The amount of good contained in this class of this business is so small in comparison to the great and numerous evils incident thereto, that it has caused me to wonder why some of the Courts of the country have seen fit to go as far as they have in holding statutes and ordinances of this class void which were only designed for the suppression of the evils incident thereto and not to the sup-

pression of the business itself. While advertising, as before stated, is a legitimate and honorable business, yet the evils incident to this class of advertising are more numerous and base in character than are those incident to numerous other businesses which are considered *mala in se*, and which for that reason may not only be regulated and controlled, but which may be entirely suppressed for the public good under the police power of the state. My individual opinion is that this class of advertising as now conducted **is not only subject to control and regulation by the police power of the state, but that it might be entirely suppressed by statute, and that, too, without offending against either the State or Federal Constitution.**''

The question of the power of Kansas City to regulate the erection and maintenance of bill-boards as an exercise of its police power was upheld in the case of Kansas City Gunning Advertising Company v. Kansas City, *et al.*, 240 Mo. 659. In that case the Court said, *l. c.* 673:

''We do not see how any other conclusion could have been reached in the light of the ruling of this Court, *in banc*, upon the pleadings and facts shown in the case of St. Louis Gunning Advertising Co. v. City of St. Louis, 235 Mo. *l. c.* 200. In that case, after an exhaustive discussion of all the appurtenant decisions in this State and elsewhere, the Court, speaking through Judge Woodson, formulated three propositions conclusive of the validity of an ordinance similar to the present and passed to meet similar conditions, in the following language:

''First, that municipal corporations, even under their general police powers, may, by ordinance, exercise reasonable control over the construction

and maintenance of bill-boards, house signs and sky signs.

" 'Second, that said power to regulate said matters begins where the public safety, health, morals and good government demand such regulation, and ends where those public interests will not be beneficially served thereby.

" 'And, third, that the mere unsightliness of bill-boards and of similar structures, as well as their failure to conform to esthetics, is no valid reason for their total or partial suppression.'

"This specification of the requisites essential to the validity of an ordinance like the present was made after a full discussion of every point of attack upon the power of municipal bodies under charter provisions like those shown in the present case to enact such ordinances; for in that case, as in this case, the ordinance was attacked as unreasonable, as class legislation and as confiscatory; and in each instance the Court ruled that there was no merit in these contentions. Since it was within the power and the clear duty of a municipal body to pass such an ordinance whenever the existing facts showed it was necessary to the safety and welfare of the public morally and physically, that being the highest end of all government, state or municipal.

"In view of this ruling and the finding of the trial court, upon ample testimony in the record, that the time was ripe for action by Kansas City, we hold that the present ordinance was a valid and constitutional enactment and a salutary and necessary measure of public protection as to each and every provision therein except Section 4."

The Supreme Court of Missouri, having held in the Gunning case, 235 Mo. 99, that the identical ordinances in the case at bar are valid, the plaintiff cannot overturn that decision by the ingenious method he has

adopted in his petition of stating evidence, conclusions, and attaching exhibits to his petition. The same ordinances were held to be a reasonable exercise of the police power and the evils of "bill-boards" were clearly demonstrated in the Gunning case. Plaintiff's claim that he has erected some bill-boards which do not promote the evils described in the Gunning case does not exempt him from the operation of these valid ordinances.

Furthermore, the business might be suppressed altogether and therefore, plaintiff is in no position to complain because he has been regulated instead of suppressed.

This Court has passed on that very question in the late case of Cusack Co. v. City of Chicago, 242 Mo. 526, and this Court cites with approval the very case in Missouri that passed upon the validity of the same, identical ordinances which are now under discussion in the case at bar.

In the Cusack case, 242 U. S. 526, the plaintiff in error contended that an ordinance of the City of Chicago governing the erection and maintenance of billboards in that city is unconstitutional. The section in question is as follows:

> "707. Frontage consents required. It shall be unlawful for any person, firm or corporation to erect or construct any billboard or signboard in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which such

billboard or signboard is to be erected, constructed or located. Such written consents shall be filed with the Commissioner of Buildings before a permit shall be issued for the erection, construction or location of such billboard or signboard."

The plaintiff-in-error contended that this ordinance was a violation of the fifth and fourteenth amendments; that it denied to plaintiff-in-error the equal protection of the laws and deprived it of its property without due process of law. It was claimed also that the ordinance delegated legislative power to the owners of the majority of the frontage of the property in the block "to subject the use to be made of their property by the minority owners of property in such block to the whims and caprices of their neighbors."

In discussing the validity of the ordinance the Court used this language:

> "The Supreme Court of the State of Illinois sustained the validity of the ordinance in an opinion (267 Illinois 344) which declares that the act of the legislature of that state, passed in 1912, Hurd's Stat. 1913, c. 24, par. 696, is a clear legislative declaration that the subject of bill-board advertising shall be subject to municipal control.
>
> It is settled for this court by this decision that the ordinance assailed is within the scope of the power conferred on the City of Chicago by the legislature, that it is to be treated as proceeding from the law-making power of the state, and that, therefore, it is a valid ordinance unless the record shows it to be clearly unreasonable and arbitrary. Reinman v. Little Rock, 237 U. S. 171.
>
> **Neglecting the testimony, which was excluded by the trial court, there remains sufficient to convincingly show the propriety of putting bill-boards,**

as distinguished from buildings and fences, in a class by themselves, St. Louis Gunning Advertising Co. v. St. Louis, 235 Missouri 99, and to justify the prohibition against their erection in residence districts of a city in the interest of the safety, morality, health and decency of the community.

The claim is palpably frivolous that the validity of the ordinance is impaired by the provision that such bill-boards may be erected in such districts as are described if the consent in writing is obtained of the owners of a majority of the frontage on both sides of the street in any block in which such billboard is to be erected. The plaintiff-in-error cannot be injured, but obviously may be benefited by this provision, for without it the prohibition of the erection of such bill-boards in such residence sections is absolute. He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property. Tyler v. Judges of Registration, 179 U. S. 405; Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531. To this we may add that such a reference to a neighborhood of the propriety of having carried on within it trades or occupations, which are properly the subject of regulation in the exercise of the police power, is not uncommon in laws which have been sustained against every possible claim of unconstitutionality, such as the right to maintain saloons, Swift v. People, 162 Illinois 534, and as to the location of garages, People v. Ericsson, 263 Illinois 368. Such treatment is plainly applicable to offensive structures.

The principles governing the exercise of the police power have received such frequent application and have been so elaborated upon in recent decisions of this Court, concluding with Armour & Company v. North Dakota, 240 U. S. 510, 514, that further discussion of them would not be

profitable, especially in a case falling as clearly as this one does within their scope. We therefore content ourselves with saying that while this Court has refrained from any attempt to define with precision the limits of the police power, yet its disposition is to favor the validity of laws relating to matters completely within the territory of the state enacting them and it so reluctantly disagrees with the local legislative authority, primarily the judge of the public welfare, especially when its action is approved by the highest court of the state whose people are directly concerned, that it will interfere with the action of such authority only when it is plain and palpable that it has no real or substantial relation to the public health, safety, morals, or to the general welfare. Jacobson v. Massachusetts, 197 U. S. 11, 30. And this, for the reasons stated, cannot be said of the ordinance which we have here.

The plaintiff in error relies chiefly on Eubank v. Richmond, 226 U. S. 137. A sufficient distinction between the ordinance there considered and the one at bar is plain. The former left the establishment of the building line untouched until the lot owners should act and then made the street committee the mere automatic register of that action and gave to it the effect of law. The ordinance in the case at bar absolutely prohibits the erection of any billboards in the blocks designated, but permits this prohibition to be modified with the consent of the persons who are to be most affected by such modification. The one ordinance permits two-thirds of the lot owners to impose restrictions upon the other property in the block, while the other permits one-half of the lot owners to remove a restriction from the other property owners. This is not a delegation of legislative power, but is, as we have seen, a familiar provision affecting the enforcement of laws and ordinances.

It results that the judgment of the Supreme Court of Illinois will be

Affirmed.

Dissenting: Mr. Justice McKenna."

As the ordinance of the City of St. Louis in the case at bar does not prohibit billboards, but makes reasonable regulations for them and permits them even in residence districts without the consent of a majority of the owners of property, providing only that the billboards shall be of a certain height, length, etc., which are reasonable regulations, we submit that, in view of the fact that this question has been passed upon three times by the Supreme Court of Missouri *in banc*, and finally in the Cusack case, by the Supreme Court of the United States, the judgment of the Supreme Court of Missouri *in banc* in this case should be affirmed.

Defendants in error deem it unnecessary to take up the time of the Court with a long discussion of this question, which has been fully presented to this Court on previous occasions, and rest their case on the decisions heretofore referred to, which are directly in point and which uphold the validity of these ordinances and similar ones.

Respectfully submitted,

CHARLES H. DAUES,
EVERETT PAUL GRIFFIN,
Attorneys for Defendants in Error.

SUBJECT INDEX.

Authorities Cited.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 566.

ST. LOUIS POSTER ADVERTISING COMPANY, *Plaintiff in Error.* vs. THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor, JAMES N. McKELVEY, Commissioner of Public Buildings, and WILLIAM YOUNG, Chief of Police, *Defendants in Error.*	No. 24,165. No. 26,033.

In Error to the Supreme Court of Missouri.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

This suit is brought by the St. Louis Poster Advertising Company to enjoin the City of St. Louis, its Mayor, its Commissioner of Public Buildings and

its Chief of Police from enforcing certain ordinances which the plaintiff claims are unconstitutional, illegal and void.

A demurrer was filed to the bill and was sustained by the Court. Plaintiff declining to plead further, final judgment was entered for defendants, from which appeal was prosecuted to the Supreme Court of Missouri. The case was affirmed in Division 2 of that court, transferred to court *in banc*, where it was again affirmed, and brought to this court by writ of error.

We give, with some condensation, the allegations of the petition to be here examined, all of which are admitted to be true. (It appears in full in the transcript, pp. 5-27).

Plaintiff, the St. Louis Poster Advertising Company, is a corporation incorporated and existing under the laws of the State of Missouri, first incorporated in 1894.

Defendants Kiel, McKelvey and Young are, respectively, Mayor, Commissioner of Public Buildings and Chief of Police of their co-defendant, the City of St. Louis.

Plaintiff owns, leases and uses more than 700 billboards and signs in the City of St. Louis, extending over a total space of approximately 50,000 linear feet, the total outer face or posting surface amounts to about 500,000 square feet. The cost of erecting

these billboards is approximately $100,000. Plaintiff has invested a further large amount of capital in establishing a plant and equipment for carrying on its business, and the same are not adapted to any other business.

The business of manufacturing posters has reached enormous proportions in the United States. Vast capital is employed in the industry and large numbers of persons depend on it for support. The size of such posters has been standardized, and no change can be made in such standardized sizes without tremendous initial expense and loss. Since a change in size would require new lithograph machines and many alterations in the large plants doing this class of work, the cost would be prohibitive. In order to use such posters economically, customers of plaintiff and other advertising concerns must prepare them in large quantities, and they require that such posters be posted generally and often simultaneously throughout the cities of the United States and Canada. The standardized size of said posters require for their display a posting surface not less than ten feet, six inches in height and from nine to seventy feet in length. More recently posters have been almost entirely standardized as twenty-four sheets and require a poster board eleven feet high by twenty-five feet long. In the record there appears the specifications for a standard billboard and reproductions of posters on such board.

The structure for display of the posters have also been standardized and have reached a high degree of excellence in manufacture. In practically every city and town in the United States, and also in all foreign countries, there are persons and corporations whose business it is to secure locations for and to erect such structures and to display thereon for hire posters and poster advertisements.

All billboards of plaintiff have been constructed of the length and height necessary to give the required outer face or poster surface for posting of such standardized advertising. Any limitation whereby plaintiff shall be compelled to reconstruct and reduce the present size of its billboards will disastrously affect the business of plaintiff and deprive it of its property.

All plaintiff's billboards are on ground privately owned, and in no case on public property or public streets.

No advertisements have been permitted to be displayed which are in any manner vicious or injurious to the morals of the residents of or the visitors to the City of St. Louis.

In its long course of business experience plaintiff has built up a valuable and profitable business, conducted at all times in compliance with the laws.

In erecting and maintaining billboards plaintiff has complied with the laws of the state and all valid ordinances of the city. All its billboards are con-

structed in a substantial, permanent, safe, workmanlike and sanitary manner, in strict compliance with the plans and specifications prepared by competent engineers and architects. They are constructed to resist a wind pressure of thirty pounds per square foot in either direction, which is the assumed wind pressure specified by the building ordinances of St. Louis for the frames of steel skeleton buildings. This corresponds to a wind **velocity of eighty-three miles per hour**, which is a **greater velocity** than is of record in St. Louis. The billboards, as constructed, have as great power of resistance as the standard required for the tallest office building. None of plaintiff's billboards have been blown down.

Every reasonable precaution has been taken to insure safety from fire. All frames and facings of the billboards are of **galvanized steel.** Many tests have demonstrated that the billboards **will not carry fires,** and **if set on fire will not burn,** unless through the intervention of other causes. Plaintiff has never lost a billboard through fire. It carries no fire or tornado insurance. The billboards are in numerous instances safely and carefully equipped with electric wires and lighted with electricity.

The billboards and signs are made of the **best material;** are **maintained** in a **safe, permanent, substantial, workmanlike** and **sanitary** condition. They in nowise **endanger** the **lives** or **safety** of **passersby.**

They are so **maintained, managed** and **conducted** as not to create a nuisance in **fact** or in **law.**

None of plaintiff's billboards or signs have **ever been condemned** by officials of the City of St. Louis or **charged** by them as being a nuisance or a **menace** or **detriment** to the **public welfare, health, morals** or **safety** of the city or of its inhabitants.

Plaintiff's services have become a **commercial necessity** to many enterprises doing lawful business in the City of St. Louis.

Plaintiff has expended **large sums** in **procuring leases** of lots for erection of its billboards and for permits for erecting signs on buildings. These leases and permits run from three to five years. The average rentals paid property owners renders it necessary that the available space rented shall be used in order to derive a fair profit from the business.

Plaintiff has also made numerous contracts with customers for display of their advertisements, running from six months to three years, the performance of which contracts require plaintiff to maintain its billboards and signs.

The income of plaintiff is derived solely from the payments made to it by such customers.

Plaintiff has heretofore constructed a great number of billboards and signs in conformity to law under permits for which it has paid large sums. In every instance of erection or repairing billboards or signs, it has tendered the city the fee lawfully required. No

billboards or signs have ever been erected or repaired except with notice to the city and under its observation. The attention of the city officials has been directed to the way the work was being done and their advice sought.

All the billboards and signs in the city are, at the filing of the petition, in **thoroughly safe condition** and in **good repair,** built and maintained as above set forth.

The allegations of the petition are admitted to be true by the demurrer and will be so treated by this Court. But, beyond the technical rule, in view of much that is said in an opinion of this Court, which it will be our duty to discuss in this case, we think it proper to submit that the allegations of the petition are not merely the statements of the pleader, nor do they rest merely on the oath of plaintiff's acting president attached to the petition. In particular, as regards the important point of the **safety** of the structures erected by plaintiff, the petition contains important matters in substantiation of its allegations.

The specifications according to which plaintiff's billboards are constructed are fully set forth in the body of the petition. A blue print of the plan is attached to the petition as Exhibit "A". One need not be an engineer to understand that they provide for **substantial structures,** as plaintiff claims them to be. We direct attention to the **anchor posts to secure**

the braces. They are of white cedar, not less than four feet into the ground with two "dead men"; the rear one not less than four feet underground, the front one 12 to 18 inches. Eight pictures of certain of said billboards now in use by plaintiff in the City of St. Louis are attached to the petition as exhibits and speak for themselves.

In addition the petition in its body contains the affidavits of five persons peculiarly qualified to speak on the points with which they deal.

Andrew J. O'Reilly, who was president of the Board of Public Improvements for several years, who since has resumed the practice of his profession as civil and mechanical engineer, has examined the plans and specifications and computed the loads the different parts of the structure will bear. He tells us such structures would withstand a wind pressure of 30 pounds per square foot. Practically, that means withstand a hurricane (Rec., p. 19).

James A. Smith, Commissioner of Public Buildings, and architect and builder by profession, gives his affidavit to the same effect, and adds that he has examined several of the billboards now owned and maintained by the complainant in the City of St. Louis, and that the same are constructed and maintained in a safe, secure and warkmanlike manner and do not in anywise endanger either life or property (Rec., p. 19).

James M. Sullivan, a superintendent builder, for six and a half years; was chief inspector in the office of the Commissioner of Public Buildings. The inspection of the conditions of billboards and signs throughout the city was under his immediate charge. During that time no billboard was ever condemned as unsafe, unsanitary or dangerous to life or property. He can not recall that a billboard was destroyed by fire, or that it caused or carried it. In his opinion the billboards were not a hiding place for criminals, for illegal practices or deposit of refuse; none of them, as far as he knows, were ever condemned as a nuisance. He also has examined the specifications and plans and agrees with the other deponents (Rec., p. 2).

H. W. Powers, a practical architect, was architect and superintendent of designs and buildings in the commissioner's office for about six and a half years. He also has carefully examined the specifications and plans and endorsed what is said about them by the prior deponents. He adds that he has carefully examined a great number of billboards and signs maintained and operated by plaintiff in St. Louis at the time of filing the petition, and that they are constructed in a secure, safe, sanitary and workmanlike manner. He has no knowledge of robberies or illicit practices committed behind billboards of complainant (Rec., p. 21).

Ernest J. Russell, of the well-known firm of Maurran, Russell & Crowell, architects, states that the design of the billboards is simple and the stresses can be accurately computed. He repeats the statements above as to wind pressure, etc., and in conclusion says that billboards so constructed are, in his opinion, absolutely secure and safe, and do not constitute a menace to life or property (Rec., p. 22).

The petition then sets forth a number of sections of ordinances (Rec., p. 9); not merely those which are directly challenged here as void, being Sections 14, 81 and 177 of Ordinance 22022, but others related to them, of assistance in understanding them. We condense the substance of all these ordinances thus pleaded as follows:

The Ordinances

(18364, Section 209, April 7, 1897):

No billboard to be erected without permit of Building Commissioner. Fee $1.00 for 25 feet or fraction thereof. Plans to be approved by Commissioner.

In fire limits, no board more than 14 feet high, 2 feet clear space from lower edge. Unlawful to place one board above other increasing height.

(22022, April 7, 1905):

(From the title.) "An ordinance governing the construction, etc., of buildings in said city and providing for the safety of the public in theaters, opera

houses, and other buildings devoted to public amusement."

Section 1 repeals the prior building code.

Section 2. No work except minor repairs shall be done upon any structure, building, or shed without a permit from Building Commissioner.

Section 14. The fee for permits.

To erect or alter a building $1.00 for $1,000 or less; 50 cents for each additional $1,000 or fraction thereof.

To remove a building $1.00 for 2,500 square feet or less and 50 cents for each additional 2,500 square feet.

To erect signs under Section 81, $1.00 for 25 square feet or portion thereof. Each permit shall state the number and size of signs permitted thereby and location of premises.

To erect billboards $1.00 for every 5 lineal feet. Permit shall state length of board, and street and number of the premises whereon they are to be erected and their distance from the line of the street.

Section 81. Signs. Any sign on top of building or attached to walls of building that becomes unsafe shall be taken down on notice from Commissioner.

No sign exceeding 20 square feet shall be erected on any building without permit, as provided in Sections 2 and 14.

No sign exceeding three and half feet in width or 10 feet in height shall be attached to any building unless it is constructed wholly of metal or other noncombustible material.

When two or more signs on any building are placed one above the other, they shall be treated as one, including the intervening spaces, unless they are more than 6 feet.

No sign to project more than 18 inches over building line of street, nor shall any projecting sign be nearer than 8 feet to the ground, nor shall any sign be placed so as to obstruct any fire escape or interfere with the operations of the fire department.

Every sign upon a building shall be supported with heavy iron braces bolted to the walls or roofs of the buildings.

It shall be unlawful to erect any sign in violation of this section.

Section 82. Towers, dormers and spires may be erected on top of buildings, but shall not occupy more than one-quarter of the street frontage of any building, and shall not have a base area of more than 1,600 square feet. They shall be built of non-combustible material. They shall not be permitted on buildings of the second and third class where their extreme height shall exceed 150 feet above street grades.

Section 177. Hereafter no billboard of twenty-five square feet or more shall be erected, altered, refaced or reconstructed without permit, and the manner of construction, location and dimensions of such billboards shall be subject to the approval of the Commissioner in accordance with this section.

"Billboard" includes all structures of whatever

material, which are erected, maintained or used for the public display of posters, painted signs, pictures or other pictorial or reading matter, excluding, however, the "signs" covered by section 81.

No billboard shall exceed fourteen feet in height above the ground.

It shall have an open space of four feet between the lower edge and the ground, and not to be closed in any manner.

No billboard shall approach nearer than six feet to any building nor to the side line of any lot.

Nor nearer than two feet to any other billboard.

No such billboard shall exceed 500 feet square area.

It shall not approach the street line on any street, alley or right-of-way on which any lot fronts or abuts nearer than fifteen feet.

And where the building line within fifty feet of the proposed billboard is more than fifteen feet from the street or boundary line, then the billboard must be kept within the building line.

Where buildings are hereafter built near billboards, the latter shall be moved or cut to leave a space of six feet between the building and the billboard.

Any billboard which now is or hereafter becomes unsafe, and any which may hereafter be erected or altered contrary to this section, shall be removed by the owner of the board or of the property on which it stands, upon notice as provided in section 179.

No rotten or unsafe billboards shall be repaired except in accordance with this section and on permit.

Section 179. When on survey and examination the Commissioner finds any building or other structure is in a condition or situation to endanger the lives of persons passing or residing in the vicinity thereof, or to endanger property, he shall notify the owner to have the same removed or otherwise properly secured within three days. In default thereof the Commissioner causes it to be done, and the cost can be collected of the owner. The owner who fails to comply with the notice is subject to a fine of from $25 to $500.

Section 180. Deals with the form of the notice contemplated by the preceding section and the manner of service.

Section 181. No agent of the owner of any building or other structure shall, after notice as above, rent the same or collect any rent therefor until it is rendered secure, under liability to a fine of from $25 to $500.

Section 182. The Commissioner has power to require all persons to correct, remove or abate any state of things done, or caused or permitted by them in violation of this ordinance. On their failure to act he may, when the public interest may so require, correct, remove or abate "the same" (the "state of things"). The expenses are to be collected as provided in section 179, and are further declared to be a lien against the property whereon such violation was

permitted to exist. Violators of this section are also guilty of a misdemeanor.

Paragraph VIII of the petition (Rec., p. 14) sets forth the specific grounds on which plaintiff claims these ordinances, Sections 14, 81 and 177, to be in conflict with the Constitution of the United States and with the Constitution of the State of Missouri, and so void. The argument following this statement develops the proposition involved.

The Commissioner has declared his intention of enforcing said (unconstitutional) ordinances, of requiring plaintiff to tear down its billboards, and to reconstruct them in accordance with these alleged ordinances. This would compel plaintiff to pay large sums for permits, **more than 500 times the amount required for any other class of buildings.** It would compel plaintiff to tear down billboards built under permits certainly valid at time of building. Rebuilding will cause great expense and loss to plaintiff. If the alleged ordinances are enforced plaintiff will lose 35 to 40 per cent of square feet of the space it now uses. Reducing billboards in height and length as fixed by these ordinances would make the posting surface far less than that required for standardized advertising, and so that line of advertising would be a total loss to plaintiff. Plaintiff would be charged with heavy damages for breaking its contracts.

Under these ordinances no billboard can be erected on a lot of thirty feet or less frontage, since these

boards can not be nearer than fifteen feet to the boundary line of the lot. In very many instances plaintiff has leased such lots. It can not use them for advertising, the only purpose for which it leased them, but continues liable for rent.

It is impossible for plaintiff to continue in business and comply with these alleged ordinances. If they are upheld plaintiff will be prevented from increasing its business in St. Louis, its plant will become valueless and its property will be taken and destroyed without just compensation. It will become impossible for plaintiff to carry out existing contracts, since the prescribed billboards will not allow of standardized advertising.

Plaintiff has endeavored to comply with the alleged ordinances, and actual experience has demonstrated that it can not remain in business and comply with such ordinances.

The Commissioner has refused plaintiff permits lawfully applied for (on plaintiff's assertion that said ordinances are void), and has served notices in writing on plaintiff to remove billboards therein described, declaring his intention to tear them down if not removed within three days. One of such notices, concerning the southeast corner of Sarah and Olive streets, is fully set forth in the petition. The billboard, the notice says, has a surface of more than 500 square feet; its extreme height above the ground

exceeds fourteen feet; it has a space of less than four feet between the lower edge of board and ground; is less than six feet distant from the nearest building, and less than fifteen feet distant from the nearest street.

The city and its officers have never inspected plaintiff's signs or billboards with a view to determine whether or not they were in dangerous condition; nor have they notified plaintiff, or in any way claimed that they were in an unsafe, unsanitary or dangerous condition, but the Commissioner is threatening to tear down plaintiff's billboards and gives for the sole reason that plaintiff has failed to compiy with said pretended ordinances.

The Mayor and the Chief of Police are alleged to be in accord with the Commissioner's action—the Mayor directing it, the police ready to sustain it.

After setting forth the want of remedy at law, the petition concludes with a prayer for an injunction against the enforcement of the ordinances claimed to be unconstitutional, and with a general prayer for relief.

ASSIGNMENT OF ERRORS.

The Supreme Court of Missouri erred in declaring the ordinances of the City of St. Louis, attacked as unconstitutional in this case, to be valid, whereas:

1. Said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they abridge the privileges and immunities of plaintiff, a citizen of the United States, and of all citizens of the United States in the City of St. Louis, Missouri, who own interests in realty, so far as plaintiffs may deal with them as to such realty, in this:

(*a*) Said ordinances deprive persons owning interests in realty in the City of St. Louis, and especially this plaintiff, of lawful and reasonable use of that part of the realty which lies within fifteen feet of any public street or alley, or within six feet of any building without public necessity therefor and without any compensation.

(*b*) They limit the height, size and method of construction of billboards without public necessity therefor, and without any compensation.

(*c*) The aforesaid limitations as to location, height and size and method of construction of billboards are made general throughout the city without regard to location or surrounding conditions.

(*d*) Said ordinances prohibit plaintiff from making

reasonable and necessary repairs on signs and billboards heretofore by it erected, and thus will prevent it from relieving itself from great loss and from prospective liability for damages.

2. Said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they deny to this plaintiff, a citizen of the United States within the jurisdiction of Missouri, and to such other citizens of the United States as own interests in realty in the City of St. Louis as may deal with plaintiff, the equal protection of the laws in this:

(*a*) Said ordinances are designed and do discriminate against the lawful business in which plaintiff is engaged, and were designed to and ultimately will deprive plaintiff and all others engaged in the same business of their present plants, and will drive them entirely out of business in the City of St. Louis.

(*b*) Said ordinances are directed against structures erected for advertising purposes solely, because they are used for such purposes, and do not apply to any other structures, though all drawbacks of which the law can take cognizance as to advertising boards are equally applicable to other structures.

(*c*) Said ordinances discriminate against signs and billboards in prescribing an unjust, unreasonable and oppressive fee to be paid for permits to erect signs and billboards within the City of St. Louis, without any reason therefor, which fees are more than five

hundred times greater than the fees charged for similar permits for any other structures or buildings.

3 Said ordinances violate the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that they deprive the plaintiff and all owners of interests of realty in the City of St. Louis, who may do business in the City of St. Louis, of their liberty and property without due process of law in this:

(*a*) Without due process of law they deprive plaintiff and those who own interests in realty in the City of St. Louis of the liberty of maintaining, erecting and displaying, and of permitting to be erected, maintained and displayed, signs and billboards so constructed as not to endanger the safety of the public, nor to endanger public health and morals, thus depriving them of the liberty to carry on a lawful business, without unreasonable restrictions, and depriving them of making a beneficial and profitable use of their property.

(*b*) The limitations which said ordinances impose on the use of real property by plaintiff and others constitutes the taking of property for a use which is not public and is without compensation.

(*c*) The provisions of said ordinances are unreasonable, unjust and oppressive, and go far beyond any regulations needed for the protection of the health, safety or morals of the public.

POINTS AND AUTHORITIES.

I.

"The law will not allow the right of property to be invaded under the guise of a police regulation, when it is manifest that such is not the object and purpose of the regulations."

If the regulations have no real, substantial relation to public health, safety or morals, it is the duty of the Court to so adjudge and thereby give effect to the Constitution.

Mugler v. Kansas, 123 U. S. 661;
Minnesota v. Barber, 136 U. S. 313 (320);
People v. Weiner, 271 Ill. 74;
Lawton v. Steele, 152 U. S. 133.

II.

This case was decided by sustaining a demurrer to a petition wherein facts were elaborately set forth negativing all conditions calling for exercise of police power. In substantiation hereof, the challenged regulations are first examined individually and then as a connected system.

III.

The first regulation requires billboards to be moved fifteen feet back from the street line. Mere moving

back of the boards can have no relation to public health or morals and can be justified as exercise of the police power, if at all, only on the theory that it tends to promote public safety.

(a) Even though billboards in practice were carelessly constructed, that fact would not justify their absolute prohibition (on fifteen feet of ground). All proper objects would be attained by regulations insuring the safety of such structures. Absolute prohibition of them is arbitrary, unreasonable and unconstitutional.

Passaic v. Patterson Bill Posting Co., 72 N. J. L. 285;
State v. Lamb, 98 Atl. R. 459;
State v. Whitlock, 149 N. C. 542;
Crawford v. Topeka, 51 Kan. 756;
People v. Weiner, 271 Ill. 74;
Chicago v. Gunning System, 214 Ill. 628.

(b) But, wholly apart from the foregoing point, it appears in this case that billboards are no more liable to be blown down than any other class of structures. On the facts there is nothing to justify this regulation as exercise of police power.

IV.

The next regulation requires billboards to conform to the building line in the block when that line is more than fifteen feet from the street. This provision,

superimposed on the preceding one, can only rest on aesthetic considerations, and these do not warrant exercise of police power.

Gunning v. City of St. Louis, 235 Mo. 99 (200);
Lawton v. Steele, 152 U. S. 133;
Fisher v. Woods, 187 N. Y. 90;
Austin v. Murray, 16 Pick. 126;
People v. Murphy, 195 N. Y. 126.

V.

The regulation limiting the height of boards to fourteen feet, like the above-mentioned regulations concerning the distance from the street, is in no way concerned with public health or morals, and can seek its justification only in protection of public safety. Here, too, the undisputed fact is that the billboards are not unsafe, and that there is no more occasion to regulate their height than that of any other structures.

VI.

There are regulations such as that directing that no billboard shall be nearer than six feet to any building and the requirement that there shall be a two-foot space between billboards which can only be referred to danger from fire.

VII.

As regards matters affecting public health and morals, there is no reason for the regulation. Billboards are now constructed and maintained so as not to constitute a nuisance in law or fact.

VIII.

The cost of the permit from the Building Department of the city government, under this ordinance, in the case of billboards, is several hundred times what is required for other structures. No reason for such discrimination exists.

St. Louis v. Theater Co., 202 Mo. 690;
State v. Layton, 160 Mo. 474.

IX.

As a whole, all the challenged regulations are inspired by hostility to the billboard business, largely camouflaged under aesthetic considerations, which furnish no justification for exercise of the police power (*ante* IV). That hostility, pervading all the regulations, has left visible evidence in detail.

(a) The definition of the billboard given in the ordinance does not refer to anything inherent in the structure, but includes all structures, of whatever material, on which advertisements are displayed. The

advertisement, not the structure, is attacked (authorities *ante* under IV).

(b) Signs are picked out for regulation from all the possible structures on or against buildings.

People v. Murphy, 195 N. Y. 126.

(c) The provision of the ordinance compelling billboards to be moved back to the building line, can not stand as exercise of police power. Here it is important as a manifest attempt to bolster hostility to the business with (legally inadequate) aesthetic considerations.

(d) The hostility further appears in charging hundreds of times as much for building permits for billboards as is charged in the case of other structures.

(e) The dimensions of billboards are so limited by these regulations that they fall short of accommodating a very large class of advertisements which have been standardized and can not be changed save by heavy expense as to machinery producing them.

X.

Leading cases on regulations of billboards are as follows:

Haller Sign Works v. Training School, 249 Ill. 436 (1911):

The law forbade signboards, etc., within 500 feet of

any public park. The act was viewed as "an attempt to exercise the police power from aesthetic considerations, disassociated entirely from any relation to public health, morals, comfort or general welfare", and consequently unconstitutional. The right and duty of the Court to inquire into the facts where the exercise of the police power is in question is firmly upheld.

> "When there has been an attempt to exercise the police power of the state by the lawmaking department of the government, and the validity of such act is challenged as being an unreasonable invasion of private rights, the courts must, upon their own responsibility, determine whether in the particular case the constitutional limits have been passed. (Sinking Fund Cases, 99 U. S. 700.)"

Commonwealth v. Boston Adctsg. Co., 188 Mass. 438; Turns on the validity of a regulation of the Metropolitan Park Commission prohibiting signs visible from the parks. After finding that the regulation was for aesthetic ends, the Court said:

> "The question here is not of the power of the State to expend money or to levy taxes to promote aesthetic ends, or to regulate the use of property with a view to promote such ends. It is of the right of the State by such regulations to deprive the owner of property of a natural use of that property without giving compensation for the resulting loss to the owner."

People v. Green, 85 N. Y. App. Div. 409; Park Board prohibits advertising on lots fronting parks or adjacent thereto; the Court said:

> "The placing of a fence upon private property upon which is displayed an advertisement is certainly no more subject to the police power of the State than would be the placing upon the property of a shop, house or other structure. The prohibition of such a use of the property does not come within any of the definitions of the police power to which our attention has been called."

Varney v. Williams, 155 Cal. 318; The ordinance forbade the erection of billboards. In the trial court, the special billboard involved was declared a nuisance, but this was rested on the fact that it was contrary to ordinance. The single question for decision, therefore, was whether the enactment of this ordinance was constitutional. It was decided in the negative. As to the regulation in the ordinance here examined, which prohibits all billboards within fifteen feet of the sidewalk, this case is directly in point.

Bryant v. Chester, 212 Pa. St. 259; The ordinance prohibits billboards, etc. The preamble to the ordinance recited that (in the opinion of the legislating body) "show bills and advertising boards are unsightly, and very often are either a nuisance or create one". The Court holds that, "under the police powers of a municipality it may prohibit the erection of

insecure billboards within its limits, prohibit the exhibition on **secure** ones of immoral or indecent advertisements or pictures, and protect the community from any **actual** nuisance resulting from the use of them. * * * The ordinance means that, though as a matter of fact, a billboard may not be unsightly to any other person than those of members of councils, and may not be a nuisance nor create one, and the advertisement on it may neither shock nor offend public decency, an owner of private property can not erect one on his land. **This is a gross attempt at interference with the lawful use of private property.**"

City of Chicago v. Gunning System, 214 Ill. 628: The ordinances were held unreasonable: First, because they laid down restrictions throughout the city which would be unreasonable in large parts thereof; second, because certain special restrictions as to boulevards or pleasure drives were invalid. There was no evidence on which to base the reasonableness of the restriction; third, the annual license fee was unreasonable.

Carran Bill Posting Co. v. Denver, 47 Colo. 221, 27 L. R. A. 544 (1910): The ordinance in question forbade billboards within ten feet of any street or alley, more than twenty-five feet in length, more than eight feet in height, and nearer than ten feet to any building or structure. The law is stated as in the other cases from which we have quoted, and the conclusion

is reached that: "the prohibition of the erection of structures designed for advertising purposes within ten feet of other structures or upon the lot line, however safe, sanitary and morally unobjectionable they may be, is an unwarranted invasion of private rights and can not be tolerated. The necessities of the public do not require so drastic restrictions, and it is those necessities alone that test the reasonableness of such enactments."

We call attention to the following as not without bearing in this case: "At the trial in the County Court, counsel for the city apparently assumed and presented the case without controversy or question, upon the theory that billboards and structures designed to be used for advertising purposes are always unsubstantial in construction, and invariably made of wood. It was upon this theory, so **erroneously assumed by counsel, and wholly unsupported by evidence,** that the learned trial judge based his conclusions and sustained the ordinance."

Crawford v. Topeka, 51 Kan. 756: All billboards must be back from street a distance of five feet in excess of height of billboards. The ordinance was held unreasonable and void.

Passaic v. Patterson Bill Posting Co., 72 N. J. L. 285: The court below (71 N. J. L. 75) upheld the ordinance. This Court, on appeal, reversed the decision. In this case the Court, after quoting with ap-

proval a statement of the general principles involved from the opinion of the court below, continues:

> "The Supreme Court (the court below) held that because the erection of such signs might be attended with danger to the public at times of severe storms, or by decay of their supports, the ordinance was not without legal authority" (the precise point asserted in this case).
>
> "In our opinion, the legality of the ordinance does not depend on the possibility of danger thus suggested, but upon whether such a regulation is reasonably necessary for the public safety. There must always be a possibility of danger from the erection of any structure, and from its decay, but such a possibility is not sufficient to justify the municipal authorities in depriving a man of the ordinary use of his land."

The opinion impliedly admits that billboards may be more dangerous than other structures, and holds that such a fact would not justify the ordinance. But in this case it can not be disputed that billboards are even less dangerous than other structures. The decision then shows that the ordinance furthermore was enacted for aesthetic considerations, not a matter of proper exercise of police power.

State v. Whitlock, 149 N. C. 542: The ordinance deals solely with one restriction; under it all billboards must be "at a distance of at least two feet more than the height of said billboard from the outer

edge of the sidewalk of the street". The constitutionality of that provision was the only question before the Court. The ordinance was held unconstitutional.

People ex rel. Winebargh v. Murphy, 195 N. Y. 126: The ordinance limited height of sky signs to nine feet (syllabus):

> "It was not enacted in the interest of public health, morals or safety, or for any other purpose within the police power, but simply to prevent or restrict the display of advertisements."

As to the power to pick out signboards for special legislation, the Court says (p. 135):

> "The classification, as well as the ordinance itself, must be based upon some necessity justifying the exercise of the police power. It has been said that the police power of a municipality is allied to the right of self-preservation in an individual. In exercising such power or right, the purpose thereof, and the limitations thereon, should not be forgotten. The classification of the sky sign by the ordinance in question is dependent upon the letter, word, model, sign, device or representation in the nature of an advertisement, announcement or direction, and it has no direct relation to the safety of the public. An ordinance which purports to legislate for public safety must tend in some appreciable way to that end. Unless there is a substantial connection between the assumed purpose of the

ordinance and the end to be accomplished such ordinance is unenforcible."

The following cases, on varying facts, are emphatic as to the propositions on which we rely:

Town of Greensboro v. Ehrenreich, 80 Ala. 579: In this case an ordinance prohibiting importation into the town or the sale of second-hand clothing, etc., was held unconstitutional. We quote from the decision as applicable here:

> "Municipal authorities, having power to abate nuisance, can not absolutely prohibit a lawful business not necessarily a nuisance, but may abate it when so carried on as to constitute a nuisance."

Austin v. Murray, 16 Pick. 121: The ordinance in question provided for burial grounds and ordered that no one should bury dead bodies on his own premises. The Court says:

> "The illegality of a by-law is the same whether it may deprive an individual of the use of a part or the whole of his property; no one can be so deprived unless the public good requires it."

The Court then makes inquiry into facts and finds that the public good does not require this restriction and accordingly holds the ordinance unconstitutional.

Western Granite Co. v. Knickerbocker, 103 Cal. 111: The law examined regulated the height of di-

vision fences and partition walls. The Court construed the law as referring to fences, etc., on the line—*i. e.*, on the property of both adjoining owners—declaring that it would be unconstitutional if it proposed to regulate a structure wholly on one owner's land. The Court said:

> "The Legislature can not thus create an easement in favor of certain proprietors over the lands of another, nor declare the usual and ordinary use of property a nuisance when such use infringes on the legal rights of no one."

The case is peculiarly apposite in a discussion of the provision requiring billboards to be moved back to the building line, when that is more than fifteen feet from the sidewalk.

Bostwick v. Sams, 95 Md. 400: No building permit shall be granted unless in the judgment of the Appeal Tax Court the size and general character and appearance of the proposed building conforms to the general character of the buildings previously erected in the same locality, and will not in any way tend to depreciate the value of surrounding improved or unimproved property. See, also, Byrne v. Md. Realty Co., 98 Atl. 547.

Held void as not a case for exercise of police power.

St. Louis v. Hill, 116 Mo. 527: The ordinance under consideration attempted to prohibit the erection of

any building within forty feet of Forest Park boulevard. The decision declares this restriction on the use of property to be a "taking" within the meaning of the constitutional provisions, unless in exercise of the police power, as it was not in that case, and, as we hope to have shown, it is not in this case.

Says Sherwood, J., in that case (p. 534):

> "If this is not a 'taking' by **mere arbitrary edict**, it is difficult to express in words the meaning which should characterize the act of the city."

In that case forty feet were taken; in this, it is only fifteen. In that the taking consisted in the prohibition of all building; in this the prohibition is limited to an arbitrarily selected class of structures. What is said in that case applies without need of further adaptation in this.

Byrne v. Maryland Realty Co., 98 Atl. 547:

> "The law provided that no dwelling house shall be erected within a described portion of Baltimore unless it is constructed as a separate and unattached building; and if such buildings are * * * of stone or brick construction they shall be at least ten feet apart. The buildings proposed to be erected were two-story brick houses, built in pairs, with a distance of eight feet between each pair of houses. The proposed houses were in contravention of the terms of the ordinance. They would have a tendency to de-

preciate some neighboring property, but they would be no menace to public health or safety. The Court said:

"'The Legislature had no power to pass the act. The act does not relate to the police power, and its enforcement would deprive the appellee of property rights guaranteed by the Constitution, which can not be invaded for purely aesthetic purposes under the guise of police power.'"

XI.

The decision of the Supreme Court of Missouri, brought up here for review, does not discuss the case on its merits. It simply affirms the decision below on the authority of a prior case, in which the facts presented are in strongest possible contrast to those brought out in this case as to all vital matters on which the existence of the police power turns.

XII.

The last decision of this Court in a billboard case (Cusack Co. v. Chicago, 242 U. S. 526) lays down doctrines which should lead to the reversal of this case on the facts here appearing.

ARGUMENT.

This proceeding was an injunction brought by the St. Louis Poster Advertising Company against the City of St. Louis and its officials to restrain the enforcement of certain ordinances of the City regulating billboards, which ordinances the plaintiff claimed to be unconstitutional. The petition was demurred to in the trial court and final judgment there rendered for defendants on the demurrer. The case was appealed to the Supreme Court of the State of Missouri, where the decision below was affirmed. The case reaches this tribunal by writ of error.

The provisions of those ordinances attacked as unconstitutional will be detailed later. In general they prohibit billboards on certain property, and minutely regulate the location, height and size of the structures. It is conceded by the Supreme Court of Missouri that these regulations constitute a taking of property without compensation and are unconstitutional unless they were adopted in exercise of the police power. Only on that view can these ordinances be upheld.

In discussing this case, there is no occasion to inquire for what purposes the police power can be exercised. We expect to show that the provisions of the ordinance can seek their justification only in protection of public safety, health or morals; that

the only other considerations for these regulations are of an aesthetic nature. That the police power can not be exercised on aesthetic grounds is well settled, and has been admitted in this case by the Supreme Court of Missouri.

All concede that the mere assertion by the legislative body that its action is in exercise of police power does not make it so.

Nor does deference to the conclusions of the highest tribunal in the state in matters of right under the Federal Constitution relieve this Court from independent weighing of the reasoning on which those conclusions are based.

> "The Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty —to look at the substance of things, whenever they enter upon the inquiry, whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.
>
> The law will not allow the right of property to be invaded under the guise of a police

regulation—when it is manifest that such is not the object and purpose of the regulations."

Mugler v. Kansas, 123 U. S. 661.

In the statements thus made, we have eliminated much superfluous matter from this discussion and have focused our inquiry accordingly. We shall assume the burden of showing that on the record before this Court it affirmatively appears that the regulations here complained of can not be justified as exercise of police power.

The petition set forth the regulations complained of in detail. It took up every ground on which each of such regulations might assume the guise of exercise of police power, negatived in detail the existence of supposable facts, which might justify the city's action, and set forth in full the facts which showed that no situation existed warranting these regulations. As the case was decided on demurrer, so that there are no other facts, than appear in the petition, and as these facts, for purposes of this hearing, are indisputable, we shall hereinafter allude to the statements of the petition as the facts of this case, without reiteration of the source whence they are derived.

The Regulations of the Ordinance.

Billboards are defined in section 177 as follows:

> "The term within the meaning of this section shall include all structures of **whatever material** the same may be constructed, which are erected, maintained, or **used for the public display of posters, painted signs, pictures, or other pictorial or reading matter**, except that the term billboard shall not be applied to such signs as are attached to the roofs and walls of buildings as provided for in section 81 of this ordinance."

Section 81 deals with "any signs now erected or that may be hereafter erected, on the top of any building, or attached to the walls of any building".

The regulations of billboards are:

1. No billboard shall "approach the street line on any street, alley or right-of-way on which any lot fronts or abuts nearer than fifteen feet".

2. "In all cases where the building line of buildings within fifty feet of the proposed billboard is more than fifteen feet from the street line or boundary line, then such billboard shall not approach nearer to such street line or lot boundary line than the building line of such building is from such street line or lot boundary line."

3. "No billboard shall approach nearer than six feet to any building."

4. "Nor nearer than six feet to the side line of any lot."

5. "Nor nearer than two feet to any other billboard."

6. "Where buildings are hereafter built near or adjacent to billboards, such billboards shall be moved or cut off so as to leave a space of not less than six feet between the building and such billboard.

7. No billboard shall "exceed five hundred square feet in area".

8. Nor "exceed fourteen feet in height above the ground".

9. "Every such billboard shall have an open space of at least four feet between the lower edge and the ground which space shall not be closed in any manner while the billboard stands."

Let us next consider what objections have been advanced against billboards on which it may be sought to justify exercise of the police power.

1. That the billboards were structurally unsafe, liable to fall over and cause injuries.

2. That they were easily inflammable and thus dangerous in originating and spreading fires.

3. That billboards built near street lines tended to cut off from inspection the lots on which they stood; by reason whereof weeds grew unchecked on such lots.

4. The billboards afforded a shield under the pro-

tection of which divers objectionable practices are facilitated, of which the deposit of rubbish is included.

5. On the same basis moral offenses could more readily be perpetrated behind billboards than in open lots.

6. Criminals could find shelter behind billboards.

7. The advertising matter placed on the billboards might have been objectionable.

8. From the aesthetic point of view billboards may disfigure neighborhoods in which they are erected.

In the foregoing we have set forth all the objections which we have found as to billboards in any of the billboard cases.

The seventh ground above given is out of the case. Not only is there no suggestion that the advertising matter is improper, but the regulations we attack have no bearing on the nature of the advertisement and have no tendency to regulate them. The petition specifically sets forth the unobjectionable nature of all advertisements placed on plaintiff's boards.

As to the eighth ground, the aesthetic considerations, it is our contention that here we have the underlying motive for these ordinances. For the present, however, we are considering the possible justifications for exercise of the police power. It is well settled that aesthetic considerations do not authorize the exercise of that power.

The challenged regulations of billboards must rest

their claim to the exercise of police power on the theory that they tend to diminish the danger from unsafe structures (1 above) or from spread of fire (2). These considerations concern public safety. Or else that they diminish the danger of growth of weeds (3), and the accumulation of noxious filth (4). Here we are dealing with public health. Or, the measures guard against moral offenses (5) remove facilities for public offenses (6). These last two considerations deal with public morals. We think we have sufficiently shown that the seventh and eighth considerations are out of the case.

Each of the eight regulations as to billboards contained in the ordinances as above detailed can be upheld as exercise of the police power only if plausible support can be made out for it under the facts of the case on one of the grounds mentioned in the foregoing list.

For each regulation of the ordinance only one or two of the considerations, supposed to be founded on public policy, can possibly have bearing. Each regulation should, therefore, be examined separately.

We propose to show as to these regulations that each and all are not justified under the facts of this case.

In determining whether an enactment is an exercise of the police power, it is not enough to find that there is a possibility of evil results to be guarded against, but there must be substantial evil.

Again, the Court will not only inquire as to the existence of such substantial evil, but will also examine the remedy supplied by the enactment, and see whether it is reasonable under the circumstances.

Furthermore, it is not permitted to legislate under guise of exercise of police power against a class when the matter to be regulated is equally incident to a much larger body. A law can not be made specifically applicable to billboards when the reasons for exercise of police power are just as applicable to all other structures.

These propositions we find constantly applicable in this discussion.

Turning now to the specific regulations:

The billboard must be fifteen feet from street, lot and alley line. Obviously this regulation can be rested only on the first of the grounds above given; on the assumption that billboards are flimsy structures, liable to be blown down and thus injure the passerby unless moved so far back that the debris does not reach the street. The regulation clearly has no bearing on the danger of fire. Clearly, too, this provision was not enacted to meet the above enumerated objections concerning public health and morals. All these alleged evils would continue to exist if the boards were moved back fifteen feet from the street line.

The regulation, then, can be upheld only on the ground that billboards, as distinguished from other structures, are flimsy and liable to be suddenly blown

over. If the assumption of fact fails, the regulation is without support. The assumption is contrary to the fact, as determined in this case, to the exclusion, as a matter of law, of any contradiction. On this proposition we rest our attack on this regulation.

A.

Before dealing with this fact, we submit that this regulation would be invalid, even though in practice billboards were often carelessly constructed. Ordinances might make regulations requiring the structures to be safe, but could not absolutely prohibit their erection on certain property without making compensation. There is abundant sound authority for this view.

Passaic v. Patterson Bill Posting Co., 72 N. J. L. 285, deals with an ordinance requiring signs and billboards to be constructed not less than ten feet from the street line. The decision deals with no other than that single feature of the ordinance.

> "It is obvious that the effect of this ordinance is to deprive the landowner of the ordinary use for a lawful business purpose of a portion of his land. Such deprivation is a taking within the meaning of the constitutional provisions, and where no compensation is given to the landowner, the taking can only be justified if it is done in exercise of the police power of the State.

"The Supreme Court" (the lower tribunal) "held that because the erection of such signs might be attended with danger to the public at times of severe storms or by the decay of their supports, the ordinance was not without legal authority. In our opinion the legality of the ordinance does not depend upon the possibility of danger thus suggested, but upon whether such a regulation is reasonably necessary for the public safety. There must always be a possibility of danger from the erection of any structure, and from its decay; but such a possibility is not sufficient to justify the municipal authorities in depriving a man of the ordinary use of his land. Billboards are regularly inspected and are, in fact, safer and more secure than almost any other kind of structure. In all our cities and towns, fences and buildings are erected upon the street line, involving the same or even greater possibility of danger from severe storms or natural decay, but it would hardly be maintained that a municipality could be authorized by the Legislature to compel the owners of buildings already erected to take them down or move them ten feet back from the street line. Yet the danger to the public from bricks or slates, ice and snow falling from a building is much greater than any possible danger from a billboard. In determining whether a regulation is reasonably necessary to secure the public safety, and therefore within the legitimate exercise of the police power, existing habits and customs are of great weight, and the universal custom of building upon the street line is cogent evidence that the public safety does not require

that structures like billboards should be set back from the line."

In State v. Lamb, 98 Atl. 549 (N. J. Supreme Court), decided June 6, 1916, the Court said:

"The defendant was convicted of putting up an advertisement in violation of Section 152 of the Crimes Act, which makes it a misdemeanor for any person 'to paint or print upon or in any manner place upon or affix to any of the steep rocks called the Palisades on the Hudson River in this State' any advertising notice. It is admitted in this case that the defendant, as employe of Jersey City Poster Advertising Co., the lessee of the owner, put up such a sign on the westerly side of Clifton Road, easterly from the base of the New Boulevard bridge, between Clifton Terrace and Wilbur Place. The trial court found that this place was part of the steep rocks called the Palisades on the Hudson. This the defendant disputes, but we do not think it necessary to determine that question because we think the law is unconstitutional. It is admitted that the defendant put up the sign on the owner's property under his demise, and it is not claimed that it is detrimental to public safety, health or morals, and, therefore, the concrete question is whether the Legislature can deprive an owner of the use of his lands for the purpose of advertising a business, when the sign does not endanger public safety, or affect the health or morals of the community. We are of the opinion that it can not. The Court of Errors

in Passaic v. Patterson Bill Posting Co., 72 N. J. L. 284, held that an ordinance, passed by statutory authority, which authorized the governing body of any city to regulate the size and location of billboards and advertisements was not within the police power of the State, and that the effect of such an ordinance was to deprive the landowner of its ordinary use for a lawful business purpose. Under the present statute the landowner is forbidden to use his own land for advertising purposes. That, we think, is taking his land without compensation, therefore the law contravenes the constitution and will not support the conviction."

In *State v. Whitlock*, 149 N. C. 542, the Court had an ordinance before it directing that billboards shall be kept at a distance of at least two feet more than the height of the billboard from the outer edge of the sidewalk. Here again this is the only provision of the ordinance before the Court. The Court, after stating that the city can prohibit insecure billboards, and require owners to maintain structures in secure condition, continues:

"The city authorities may also adopt regulations as to the manner of construction of billboards, so as to insure the safety of passersby, but the prohibition of structures upon the lot line, however safe they may be, is **an unwarranted invasion of private right,** and is so held to be by all the courts which have passed upon the precise question as we are now advised."

In *Crawford v. City of Topeka*, 51 Kansas 756, the ordinance required the distance of the billboard from the sidewalk to be at least five feet more than its height. Again this was the only provision of the ordinance before the Court. The ordinance was held void.

> "All statutory restrictions of the use of property are imposed upon the theory that they are necessary for the safety, health or comfort of the public; but a limitation without reason or necessity can not be enforced. * * * Although the police power is a broad one, it is not without limitations, and a secure structure which is not an infringement upon the public safety, and is not a nuisance can not be made one by legislative fiat, and then prohibited (Yates v. Milwaukee, 10 Wall. 497; 1 Dill Mun. Corp. 374) * * * the prohibition of the erection of structures upon the lot line, however safe they might be, would be an unwarranted invasion of private right, and is without legislative authority."

In *City of Chicago v. Gunning System*, 214 Ill. 628, the Court held an ordinance unreasonable and void, which, among other restrictions, inhibited billboards within twenty-five feet from the street.

People v. Weiner, 271 Ill. 74, quite lately decided, applied to widely different facts the principle set forth in the foregoing cases. There a Chicago ordinance forbade the sale of mattresses, etc., stuffed with material which had been in prior use, even when

it had been sterilized, though the owner for his own use might so refill the mattress. This deprived dealers of a right to sell, in supposed exercise of the police power. As the structure may be safe in our case, so in that the mattress may be perfectly hygienic. After a lucid discussion of the limitations of the police power, the Court concludes:

> "It is eminently proper to require that material be free from germs of contagion and infection before being used in mattresses, whether the material be second-hand or new, but the possible danger to health or safety does not justify the absolute prohibition of a useful industry or practice when the danger can be dealth with by regulations. * * * By this act the State has deprived the citizen of the lawful use of his property in a manner not injurious or dangerous to others."

In this case it is not necessary to press the doctrines set forth in the foregoing citations. This Court will look into the facts of the case, and if no condition of affairs exists justifying the enactment as exercise of the police power will strike down the regulation.

We contrast the facts in the case at bar with the facts in the Gunning case. The opinion in that case tells us that "these billboards are temporary affairs" (p. 144), that "the sign boards" (equivalent to billboards) "upon which this class of advertise-

ments are displayed are constant menaces to safety" (p. 145). The blowing down of such boards, as viewed in that case, was so frequent a matter that generalization could be made about it. For the Court says (p. 152): "Common observation and experience teach us that generally when such structures are blown down * * * etc." The billboards that case discussed were "in the very nature of things temporary structures, generally consisting of one frail narrow line of boards, nailed to upright posts set in the ground and cheaply constructed * * *. There are no walls or roof to support and strengthen it, nothing but the braces in the rear thereof to lend them support, and they, as a rule, are the boards themselves" (bottom page 174 *et seq.*). The boards are said to be built on grounds temporarily vacant, or in litigation. "For this reason billboards must also be temporary structures, cheaply built, and more or less insecure on that account * * *. The leases for all those purposes (billboards, house signs, sky signs) must in the very nature of the business be of short duration, as compared to the duration of leases for all other classes of buildings. And it should be borne in mind that the Municipal Assembly enacted this ordinance to control and regulate these structures as they really are, and not as if they were constructed as other buildings are" (p. 192).

But this case comes under a very different state of

facts. We take up the burden and show clearly, affirmatively, that the ordinance is unreasonable.

In this case it does not appear that the braces "as a rule are the board themselves", but, on the contrary, there are deep-planted, substantial braces, each secured by two "dead men", the lower at a depth of four feet. The plans and specifications according to which these billboards have been built are before us. The plans and specifications have been carefully examined by Ernest J. Russell, a well-known architect; by James A. Smith, an architect and builder, who was for over six years Commissioner of Public Buildings, and as such in charge of the supervision of billboards; by Andrew J. O'Reilly, a civil and mechanical engineer, who for more than six years was president of the Board of Public Improvements; by H. W. Powers, who was architect and superintendent of designs in the Building Commissioner's office for the same time, and by James M. Sullivan, chief inspector in the Commissioner's office for over six years. The inspection of billboards was under his immediate charge. All of these in their affidavits confirmed the statement in the petition that such billboards will stand a wind pressure of 30 pounds per square foot in either direction, which is the assumed wind pressure specified by the building ordinance of St. Louis for the frames of steel skeleton buildings, corresponding to a wind

velocity of eighty-three miles an hour. Smith, Sullivan and Powers have each personally inspected such billboards—the last named a great number of times. According to all of them the billboards are built in a safe, secure and workmanlike manner, and do not in any wise endanger either life or property. Sullivan, who was certainly in a position to know, says that during his time no billboard was ever condemned as unsafe, unsanitary or dangerous to life or property. The petition states that none of plaintiff's billboards have been blown down; that plaintiff carries no insurance against wind or fire. Whereas, the case in 235 Mo. deemed that the leases "must from the very nature of the business be of short duration", we have here the positive statement that in fact they run from three to five years, and this statement is admitted to be true. This is because substantial billboards such as plaintiff erects would not pay for a shorter time.

Such are the facts before us in this case, as admitted by the demurrer. They affirmatively show the safety of the structures erected by plaintiff, and therewith negative the right of the city to invoke the police power as justification of this attempt to deprive property owners of a legitimate use of their property.

The Billboard Must Conform to the Building Line.

The second regulation of the ordinance requires the billboard to be set back to the building line wherever there is one in the block more than fifteen feet from the street line.

We are at a loss to conceive of anything to be said in defense of this provision. Even if reasons of public safety may be urged for keeping billboards fifteen feet from street lines, there is no connection between the building line of a block and the alleged insecurity of billboards to suggest that the public safety requires further removal from the street line in cases where there happens to be a building line in the block.

The obvious motive for this enactment is aesthetic. Resting solely on that consideration, it is bad. It is important when we deal with the underlying motive of the whole ordinance, in which connection we shall again refer to this provision.

Limitations on Height and Size of Boards.

Another provision of the ordinance seems to be worthy of separate consideration. We refer to the limitation of the height of billboards to fourteen feet, the eighth in our foregoing list of regulations. Without going again over the explanation at the beginning of the discussion of the fifteen-foot limitation, it

is clear that no considerations of health or morals are involved and that the only warrant for exercise of the police power must rest on the allegation that structures of that kind are dangerous and liable to be blown down.

It is not necessary to question *in toto* the right of the city in the exercise of the police power to make regulations as to the safety of structures to be erected. An ordinance, for instance, which prescribes for houses a thickness of foundation well related to the height of the building, provided the standard fixed is in harmony with the recognized requirements of engineers and architects, seems proper as an exercise of police power. Should the requirement, however, be more exacting than the usages of safe building require, it would be unreasonable; and the Court, in passing on such a provision, would inquire as to its reasonableness.

"The one essential and universal limitation upon the exercise of the police power is that the regulation shall be reasonably necessary and reasonably exercised." City of Chicago v. Gunning System, 214 Ill 628.

What is said as to the safety of these billboards in the discussion of the fifteen-foot billboard line has its application here. We submit that on the facts there stated there is no reason to claim that billboards over fourteen feet high are dangerous. Indeed, we think

the contrary conclusively appears. The restriction is therefore unreasonable and void.

But there are further facts, having minor application to the provision prohibiting the use of the fifteen feet adjoining the street for billboards, which render this restriction as to height peculiarly oppressive and odious.

The main element of plaintiff's business is the display of posters for its customers. Enormous quantities of such posters for each of many nation-wide advertisers are required to be displayed through the country at approximately the same time. The manufacture of these posters, with which the plaintiff has nothing to do, is a large industry. The dimensions of these posters have been standardized. A change of these dimensions is not in plaintiff's control, and, above all, impractical, not to say financially impossible, on account of the expenses entailed. The standard size of posters requires for their display a posting surface not less than ten feet six inches in height and from nine to seventy feet in length. All the foregoing is specifically set forth in the petition. We add that since this suit was filed the standard size posters require for their display a posting surface eleven feet in height.

The ordinance which limits the height of the board to fourteen feet also requires the bottom of it to be four feet clear from the ground, the ninth regulation

above set forth. The board itself thus can not be more than ten feet high. Six inches may not be much, like Mercutio's wound, but it will serve to take the life out of the posting of standardized poster advertisements.

The ordinance, inasmuch as it limits billboards to 500 feet square area, the seventh regulation, limits the length of a board ten feet high to fifty feet, which is inadequate for the display of standardized posters.

The further limitations that the boards can not come within fifteen feet of a street or alley or within six feet of the side line of the lot, the fourth regulation, also restrict the power to display standardized advertisements.

Limiting, for the present, our criticism to this provision concerning the height of billboards, we submit that the facts appearing show that it rests on no public need, is grossly in excess of any limitation fancied dangers could suggest, is arbitrary, captious and leveled at the destruction of plaintiff's legitimate business. It is not in exercise of the police power, and is void.

Regulations Which May Be Referred to Fire Prevention.

The right to make regulations preventive of fire may be invoked to defend certain provisions. (It does not apply to the provisions already discussed.)

That no sign shall obstruct a fire escape, etc., seems an authorized exercise of this police power.

But it is also provided that no signs attached to buildings shall be permitted unless wholly of metal or other non-combustible material, and that billboards shall not approach nearer than six feet to any building nor nearer than two feet to any other billboard. The question here is whether there is anything in the nature of the structures mentioned that renders them more dangerous for spreading fires than others to which the restrictions do not apply. This must be determined from the facts before us.

The petition sets forth that every reasonable precaution has been taken to insure safety from fires. All frames and facings of the billboards are of galvanized steel. Many tests have demonstrated that the billboards will not carry fire, and if set on fire they will not burn unless through the intervention of other causes. Plaintiff has never lost a billboard through fire. It carried no fire insurance. In addition, James M. Sullivan, inspector in the office of the Commissioner of Buildings, says in his affidavit, incorporated in the petition, that he can not recall that a billboard was destroyed by fire, or that it caused or carried fire. No countervailing facts appear.

We submit there is no foundation laid for exercising police power in prevention of fire against signs and billboards, as distinguished from other structures.

Regulations which may be referred to public health and morals:

It is claimed that protection of morals and public health justifies some provision of this ordinance. We collate the objectionable features under this head attributed to billboards from the case in 235 Mo. The charge is that billboards are used (or can be used) as hiding places for criminals, both to escape detection and when ready to assail victims; that they are a shield to immoral and unsanitary practices; that weeds grow unchecked behind them, thus furnishing a temptation to deposit refuse and filth of all kinds. There is no suggestion from any source that plaintiff's structures or the business it conducts is tainted with anything immoral or unhygienic. These objections do not apply to the signs, nor will it be attempted to invoke them to justify the provisions as to height of billboards, or their banishment to a distance of fifteen feet from the sidewalk.

We take up the provisions of the ordinance which may defend themselves as schemes for preventing moral and hygienic evils.

It is required by the ordinance that there be four feet of clear space between the foot of the billboard and the ground, the ninth regulation. Here the protection given to morals is this: As can be shown by simple geometry, a person by retreating sixteen feet behind the fence is from head to heels safe from

the vision of a passer on the sidewalk at a distance of four feet from the fence, the searching eye being five feet high, and the ground supposed level. The efficiency of the protection from moral offenses seems feeble.

As regards weeds on the lots on which there are billboards, it would seem that there are other amply adequate means in a great city for ascertaining the existence of such nuisance without being compelled to peep under billboards. The same remark applies to the charge that refuse can be deposited on these lots. Indeed, the main foundation for this charge is that such refuse deposits can be there made because the weeds afford concealment.

The only other provisions which can by possibility refer to sanitary or moral considerations are those requiring spacings of two feet between billboards, the fifth regulation, and six feet between billboards and buildings and lot lines, the third and fourth regulations. So far as these provisions rest on the idea of security from fire and stability against wind, they are covered by prior discussion. As to moral and hygienic considerations, it would seem that such narrow openings are rather more likely to promote the evils dreaded than to check them.

Here, again, the inquiry for the Court is whether the provisions are necessary in kind and reasonable in method under the facts in this case.

The sanitary nature of the structures is emphasized repeatedly in the bill. They are so maintained, arranged and conducted as not to create a nuisance in fact or in law. The city has never condemned any of them as a nuisance. In addition, James M. Sullivan, the former chief inspector of buildings, in his affidavit, incorporated in the petition, states that in his opinion the billboards were not a hiding place for criminals, for illicit practices or deposit of refuse. None of them, as far as he knows, were ever condemned as a nuisance. The affidavit of H. W. Powers, former Superintendent of Designs and Buildings, also embodied in the petition, states that he has no knowledge of robberies or illicit practices behind the billboards of plaintiff.

We submit that no adequate occasion has been shown for these restrictions on moral or hygienic grounds. No existing abuses are shown, and the possibility exists for other places, such as archways, open hall stairs and alleys, as to which the city has not legislated. Moreover, as is said in the dissenting opinion of Judge Graves in the Gunning case, 235 Mo. 221:

> "If nuisances or other wrongs are committed behind these or any other structures, the city has the power and should abate the nuisance and prevent or punish the wrongs. For this purpose it is not necessary to abate the structures."

The discrimination against billboards as to building permits.

Apart from the nine regulations of billboards just discussed, the ordinance contains in Section 14 a glaring discrimination as to the cost of building permits against the structures of this plaintiff in error, as contrasted with all other structures. Section 14 is set forth in the abstract of the record in this case on page 10. That section provides that "the fee to be paid for a permit for the erection or alteration of **buildings** shall be one dollar if the estimated cost of said buildings or alterations shall be less than one thousand dollars, and for every additional one thousand dollars of cost or fraction thereof, the further sum of fifty cents shall be paid * * *. The fee to be paid for a permit to erect **signs**, as provided in Section 81 of this ordinance, shall be at the rate of one dollar for every twenty-five square feet of area of such sign, or portion thereof * * *. The fee to be paid for a permit to erect billboards shall be at the rate of one dollar for every five linear feet thereof * * * ." It is an admitted fact in this case that reconstruction of signs and billboards to conform to the ordinance would require "a large sum of money in fees, to wit, more than five hundred times the amount required for any other class of buildings, repairs and improvements in the City of St. Louis". Apart from the allegation, it is self-evident, on mere reading of the ordinance, as quoted

above, that the cost of a permit for signs and billboards is hugely in excess of that demanded for all other buildings.

Any attempt to justify the selection of billboards and signs from all other classes of structures for special regulation by a gratuitous assumption outside of the record that, in the very nature of things, signs and billboards are peculiarly temporary, flimsy and consequently highly dangerous, is emphatically negatived by all the facts in this case.

No reason has been suggested for this discrimination in the cost of permits. We know no reason why this provision, standing by itself, can escape condemnation as unconstitutional.

The whole ordinance, so far as it deals with billboards, is based on no public policy, but on hostility to a legitimate business.

In what precedes we have examined leading provisions of the ordinances whose constitutionality is challenged, each by itself as an independent legal question. We respectfully submit that under the facts shown in this case none of the limitations imposed in those ordinances can be justified as a proper exercise of police power. We do not wish to relegate to the background these separate considerations ,condemnatory of the constitutionality of these several phases of the ordinances, now that we pass on to an attack on these ordinances **as a whole,** on broad considerations invalidating the whole scheme.

We adopt for statement of our challenge of the ordinances *in toto*, so far as they concern billboards and signs, the language of Judge Graves in his dissenting opinion in the Gunning case (see 235 Mo. 208):

> "To my mind the ordinance strikes at the **use of** a structure rather than the **character** of the structure. * * * No one can read these ordinances in their entirety without being convinced that the thing stricken at is advertising by means of printed or posted signs. In every line can be seen the carefully prepared design to exterminate the business by arbitrary license fees and taxes."

Before proceeding to make good that assertion by examination of the ordinance we give for our guidance in that investigation a few excerpts from well-considered opinions. Whatever may be urged as to their applicability, the doctrines themselves find general acceptance.

Lawton v. Steele, 152 U. S. 133:

> "To justify the state in interposing its authority in behalf of the public, it must appear, first, that the interest of the public generally, as distinguished from those of a particular class, require such interferences, and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private busi-

ness or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts."

Fisher v. Woods, 187 N. Y. 90:

"The Legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. The legislative determination as to what is a proper exercise of the police power is subject to the supervision of the Court, and in determining the validity of an act it is its duty to consider not only what has been done under the law in a particular instance, but what may be done by virtue of its authority."

Austin v. Murray, 16 Pick. 126:

"The law will not allow the right of property to be invaded under the guise of a police regulation when it is manifest that such is not the object and purpose of the regulations."

People ex rel. v. Murphy, 195 N. Y. 126. A municipality may make classifications in enacting ordinances; but,

"The classification, as well as the ordinance itself, must be based upon some necessity justifying the exercise of the police power."

These ordinances are inspired by hostility to billboards, and are an attempt to do whatever can be done under cover of law for their entire abolition. Since the aesthetic motive must be concealed (for its revelation would be a surrender of the whole ordinance), search is made for matters concerning public morals, health and safety to sustain the legislation as exercise of police power.

Let us now examine the provisions of the ordinance, to be considered in the light of acknowledged facts, with a view to substantiate the proposition that the legislation seeks to put an end to the business of displaying posters, and is not concerned with the safety of structures.

Section 177 says:

> "The term billboard within the meaning of this section shall include all structures of **whatever material** the same may be constructed, which are erected, maintained or **used for the public display of posters, painted signs, pictures or other pictorial or reading matter,** except that the term billboard shall not be applied to such signs as are attached to the roofs and walls of buildings, as provided for in Section 81 of this ordinance."

Why should the posting of a piece of paper on a structure of any material make it a "billboard" and thus immediately subject to the various provisions

of this ordinance a structure to which they did not apply before? What the ordinance seeks to suppress is the poster on the board. The board itself after posting is no more unhealthy, immoral or unsafe than it was before. The inclosure around any lot is not subject to these restrictions; but if an advertisement is on it, or it is leased for the purpose, it becomes a "billboard", and, among other things, must be moved back fifteen feet. This illustration is used in Crawford v. Topeka, 51 Kan. 756, and in the dissenting opinion in the Gunning case (235 Mo. 209).

The same severity is shown under section 81 as to signs "on top of any building or attached to the walls of any building" without applying it to other structures in the same place. Such a sign, if more than three and a half feet wide, or more than ten feet high, must be constructed wholly of metal or other non-combustible material. Any other structure, as roof-stands and shelters for plants grown there, or a shelter in the nature of an observatory, or attached to the walls, as for instance, a porch with balustrades along the second story, is not subject to the ordinance. The discrimination between signs and other structures on the top of houses or attached to them is pointed out elaborately in People *ex rel.* v. Murphy, 195 N. Y. 126. The Court said:

"It is not the erection or structure that is pro-

> hibited, but the thing constructed plus the letter, word, etc., * * * in the nature of an advertisement printed or painted thereon."

In *Passaic v. Patterson, supra,* it is said:

> "The very fact that this ordinance is directed against signs and billboards only, and not against fences, indicates that some consideration other than public safety led to its passage."

Another evidence of the spirit moving in this ordinance is found in Section 177:

> "In all cases where the building line of buildings within fifty feet of the proposed billboard is more than fifteen feet from the street line or boundary line, then such billboard shall not approach nearer to such street line or lot boundary line than the distance of the building line of such building is from such street line or lot boundary line."

We have dealt with this regulation heretofore as in itself unconstitutional. There is no room for a shadow of claim that this further removal of the board is ordered in the interest of morals, health or safety. Quite possibly artistic feeling was here at work. The draughtsman was pained at the thought that billboards, unsightly in his opinion, should project beyond a pleasing deep building line; but, even so, it is only a manifestation of the aversion to the

billposting business which the draughtsman conceals but indifferently.

Immediately following the provision last mentioned is this: "Where buildings are **hereafter** built near or adjacent to billboards such billboards shall be so moved or cut off as to leave a space of not less than six feet between the building and such billboard, which shall in all other respects also comply with the terms of this section." Under numerous other restrictions this provision means that plaintiff would have to destroy the board by "cutting off" or else remove it altogether from the lot. Its special bearing here is that it again shows a settled purpose to harass the business in every way possible.

Another noteworthy instance: The provision limiting the height of billboards to fourteen feet, together with the provision for four feet of clear space between the billboard and the ground, results in the regulation that the board itself can not be more than ten feet high. These facts appear before this Court: A very large part of plaintiff's business consists in displaying "standardized" posters. This standardization is general in the United States, and the sizes adopted can not be altered without heavy expenditure. These standardized advertisements require for their display a height of at least ten feet, **six inches.**

The board is made half a foot too short for a great

portion of plaintiff's business. Under claim of preventing danger from insecurity in structures the height of billboards is cut down just enough to prevent plaintiff from putting them to their most valuable use! The statement is enough. Comment would weaken the point.

The special provisions selected for criticism, and the whole enactment, must be viewed in the light of the facts which the record admits. Plaintiff's signs and billboards as actually constructed offend neither against public health, morals nor safety. There is no adequate reason for picking out these structures, omitting all others, and imposing on them galling restrictions and excessive charges. The sections of the ordinance challenged were not enacted for any purpose recognized by the law as coming under the police power. Their purpose was to suppress signs and billboards as far as may be, in accordance with certain aesthetic views. To this end they were picked out for special legislation, and burdens well calculated to annihilate the business were imposed on them solely.

We submit that on this ground the sections as a whole are unconstitutional.

Consistently herewith we have argued in the earlier part of our brief as to the several restrictions considered separately, either that facts did not exist justifying the exercise of any police power, or that the means provided by the ordinances gave no suitable

remedy and were oppressive and unreasonable; therefore unconstitutional and void.

Dealing with the facts of the case, we believe we have shown in the foregoing that the challenged regulations as to billboards can not be upheld as exercise of the police power.

The Supreme Court of Missouri, however, has decided adversely to us, and it becomes our duty to discuss before this tribunal in this case the rulings which have been made in the State as to these specific ordinances. With all respect which this Court shows to the views of the highest tribunal in the State, whenever a question under the Federal Constitution arises, this Court must decide on its independent judgment; and in ultimate analysis the decision of the State Court is of influence here only so far as the *ratio decidendi* is accepted.

We accordingly deal with these decisions of the Supreme Court of Missouri.

These ordinances first came before the Supreme Court in the case of St. Louis Gunning Advertising Co. v. St. Louis, 235 Mo. 99. In that case, the plaintiff had asked for injunction against the enforcement of the ordinance so far as it specifically affected its signs and billboards. Defendants' answer made certain formal admissions, and denied the other allegations of the petition. At the hearing below evidence was introduced on both sides.

The cornerstone of the decision is in the finding of

fact that the billboards involved in that case were dangerous, harmful structures. It is enough that the decision is based on such a state of facts. Thus the Court says (p. 145):

> "The signboards upon which this class of advertisements are displayed are constant menaces to the public safety and welfare of the city; they endanger the public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants. They are also inartistic and unsightly.
>
> "In cases of fire they often cause their spread and constitute barriers against their extinction; and in cases of high wind, their temporary character, frail structure and broad surface, render them liable to be blown down and to fall upon and injure those who may happen to be in their vicinity. The evidence shows and common observation teaches us that the ground in the rear thereof is being constantly used as the dumping ground for all kinds of waste and deleterious matters, and thereby creating public nuisances and jeopardizing public health."

On page 175 of the opinion this indictment of billboards is repeated in even more energetic terms. On almost every page of the decision it is apparent that the decision is based on such a state of facts. So in the exhaustive review of billboard cases, the Court constantly distinguishes on the facts. As illustration, it says of People v. Green, 85 N. Y. App. Div. 400, at page 171 of the Gunning opinion:

> " * * * there was no pretense but what proper advertisement could be there posted without injury being done to the morals, health or safety of the city. In other words, the question of nuisance constituted no element in that case."

Of Commonwealth v. Boston Advertising Co., 188 Mass. 348, the Court says (p. 172):

> "That case, in our opinion, was also correctly decided, for the reason that there were no facts in that case which tended to show that the maintenance of business signs at the forbidden places was dangerous to the safety or detrimental to the health or morals of the inhabitants of the city."

On the case of State v. Whitlock, 149 N. C. 542, the Gunning opinion says (p. 177):

> "In passing, it should be observed that there was no showing made in that case, as was in the case at bar, as to the necessity for such regulations in the City of St. Louis."

As to Crawford v. City of Topeka, 51 Kan. 761, it is said in the Gunning case (p. 180):

> "Likewise in this case, as in the North Carolina case, *supra*, there was no showing made as to the reasonableness of the ordinance under consideration."

(P. 192):

> "It should be borne in mind that the Municipal Assembly enacted this ordinance to control and regulate these structures as they really are, and not as if they were constructed as other buildings are."

In short, in this decision the Court found that the billboards with which it was there dealing were, in fact, dangerous to public safety and injurious to public health and morals, and **because** of that finding upheld the regulations as proper exercise of the police power. It is conceded (at least, by necessary implication) that if the billboards were not in fact dangerous to public safety, health or morals, then these regulations could not be justified as exercise of the police power, and would be unconstitutional.

The petition in the case at bar deals with a wholly different state of facts—indeed, every finding of fact in the Gunning case is negatived here and from these facts it conclusively appears that the billboards here in question are not dangerous to health, safety or morals, on any theory. The defendants chose to accept the facts thus tendered by the petition, and demurred, thus admitting the facts pleaded. In so doing they say that though billboards are as substantial as any other kind of building and no more liable to be blown over, yet the City can prohibit billboards as distinguished from other structures on the front fif-

teen feet of private property; can compel them to be moved back to the building line; and so on through all the attempted regulations.

Plainly, the question is very different from that ruled on in the Gunning case. Not only does the Gunning case not control this one; but we have good reason to urge that the principles recognized in the Gunning case logically lead to a decision favorable to plaintiff in the present case.

The demurrer was sustained below. The appeal first came before Division 2 of the Supreme Court of Missouri, and the opinion accepted by that division was rendered by Commissioner Brown (Rec., p. 36). In that opinion, the Commissioner (1) decides on the specific point as to extortionate permit fee for erection of billboards; (2) rules that the Gunning decision is not a bar to this action, nor controlling on the principle of *stare decisis;* (3) makes a brief statement as to plaintiff's claim concerning the constitutionality of these regulations, and continues (and concludes) as follows (195 S. W. No. 3, 721):

> "All these matters were before this Court in St. Louis Gunning Co. v. St. Louis, 235 Mo. 99, 137 S. W. 929. In that case the matter decided is fairly stated in a syllabus as follows:
>
> > 'An ordinance declaring that "no billboard hereafter erected, altered, refaced or reconstructed shall exceed fourteen feet in

> height above the ground, and every such billboard shall have an open space of at least four feet between the lower edge and the ground, which space shall not be closed in any manner while the billboard stands; nor shall any such billboard approach nearer than six feet to any building, nor to the side line of any lot, nor nearer than two feet of any other billboard, nor shall any such billboard exceed five hundred square feet in area, nor approach the street line on any street on which any lot fronts nearer than fifteen feet; and where buildings are hereafter built near or adjacent to billboards such billboards shall be so moved or cut off as to leave a space of not less than six feet between the building, and such billboard''—is a reasonable police regulation, in the interest of the public health, safety, peace, and morals.'
>
> ''That decision was by the Court *en banc*, where, if it is to be reconsidered, such reconsideration should be had.
>
> ''It follows that, upon the authority of that case, the judgment of the Circuit Court in this case must be affirmed.''

We fail to understand how it can be said that ''all these matters were before the Court in the'' Gunning case. As to the vital point, the cases were as contrasted in their facts as black and white.

Division No. 2, however, certified the case to Court *en banc*, which briefly disposed of it as follows:

"*Per Curiam.* The foregoing opinion of Brown, C., is adopted by the Court *in banc* as the opinion of said court. All concur, except Graves, C. J., who dissents for the reasons expressed in the dissenting opinion in St. Louis Gunning Co. v. St. Louis, 235 Mo., *loc. cit.* 207 *et seq.*, 137 S. W. 929" (Rec., p. 38).

The opinions of Commissioner Brown and the *per curiam* opinion of the Court *en banc* are to be found in 195 S. W. R., p. 717. The case is not in the regular Missouri Reports.

Should we grant that the Gunning case was correctly decided under its facts; should we give the widest possible meaning to "police power", it still remains true that no law depriving one of the use of his property without compensation can be upheld as exercise of that power when it is shown to the Court that the evils it is proposed to regulate do not exist. The Supreme Court of Missouri has ruled against us, but if it has uttered a word to explain wherein we err, we have failed to find it.

We submit that the Supreme Court of Missouri has done nothing in the case to give pause to this Court in arriving at its conclusions.

The legal propositions involved in this case are few, and there is no conflict concerning them as abstract propositions.

The case of

Thomas Cusack Company v. Chicago, 242 U. S. 526,

is the latest decision of this Court in a case concerning billboards. In that case a Chicago ordinance forbidding billboards in certain districts of that city, save with the written consent of a majority of the frontage of the district, was held constitutional. But the doctrine on which our case is rested, that regulations which are taking of property without compensation are justified as exercise of police power only when they have real, substantial relation to the public health, safety, morals or general welfare is acknowledged.

Much evidence was introduced on the trial of that Chicago case. It is worthy of passing notice that according to the statement of the tenor of that evidence given in the opinion, no attempt was made to show that billboards are unsafe structures. Some evidence was rejected by the trial court, an immaterial fact, which we mention merely because it is referred to in the decisive paragraph of the opinion, which is as follows:

> "Neglecting the testimony, which was excluded by the trial court, there remains sufficient to convincingly show the propriety of putting billboards, as distinguished from buildings and fences, in a class by themselves (St. Louis Gun-

> ning Advertising Co. v. St. Louis, 235 Mo. 99), and to justify the prohibition against their erection in residence districts of a city in the interest of the safety, morality, health and decency of the community."

So far as the case decides that **when the necessary elements of fact for exercise of police power exist,** legislation is not limited to mere appropriate **regulation,** but may extend to total **suppression** of billboards, it lays down a proposition with which many weighty rulings, referred to above, are in conflict. We are not dealing with legislation directly prohibiting billboards. Our main proposition is that the regulations of billboards here challenged rest on no facts warranting exercise of the police power, which we hope to have shown with a clearness approaching demonstration. That under such facts the legislation here in question is unconstitutional is a proposition with which we have found no decision to conflict. The Cusack decision admits the doctrine not only impliedly, but also in expressly stating, while laying down the presumptions in favor of local action, that this Court will interfere with the action of such authority only "when it is plain and palpable that it has no real or substantial relation to the public health, safety, morals, or the general welfare." We submit that the petition in this case, admitted to be true by the demurrer, plainly and palpably makes this showing.

In the Cusack case the disposition of this Court to favor validity of laws purporting to be in local exercise of police power, more especially when sustained by the highest Court of the State, is distinctly stated. We submit the case in recognition of that tendency, as set forth at the threshold of this "Argument," though it seems to us a departure from earlier decisions. We have accordingly taken up affirmatively a detailed demonstration of facts showing that no conditions exist warranting exercise of the police power. To that showing the City stands mute. However strong the presumption may be in this Court in favor of local legislation claimed to be in exercise of police power, that presumption cannot be conclusive. To so hold would strike down the protection of the Fourteenth Amendment as against all local legislation asserting itself to be exercise of police power. Wherever the burden of proof lies, this Court will—has declared itself in duty bound to—investigate whether the facts justifying exercise of police power actually exist. If the undisputed facts in this case do not show the absence of conditions justifying the challenged regulations, we are at a loss to conceive how any statement could be drawn adequate for such a purpose.

We do not close our eyes to the fact that there has been of late years a strong leaning among the people of the United States to make expanding use of the

"police power". The courts ultimately reflect sympathy with such a nation-wide tendency is inevitable, as all our history shows us. We dare not try here to stem the tide of popular feeling. It would be useless. As the pendulum inevitably swings, we must trust another generation to correct such stretching of police power as has met the approval of these days. What we rely on is the fact that this Court has long since laid down principles of constitutional law, which are solid as the everlasting hills, from which it will never depart. Under changed social and economic conditions, our ideas of the police power may slowly expand; and things may be permitted which our forefathers would have promptly rejected as unconstitutional. It may be this Court will continue to express its reluctance to strike down local enactments, which claim to be under the police power. Nevertheless it is as true today as it ever was that an enactment which takes property of the citizen, or restricts its use without compensation, is unconstitutional under the Fourteenth Amendment, unless justified as exercise of the police power; that this police power, though no accurate lines eliminating it have ever been drawn, has its limits, and those narrow ones, too, when the police power is viewed as a province of the vast domain of possible legislation. For purposes of this case, the police power can be invoked only as to public health, morals or safety. The case involves no other considerations. While a

general definition of police power, applicable to all cases, can not be made, there is no difficulty in fixing its precise limits for any particular case, such as this.

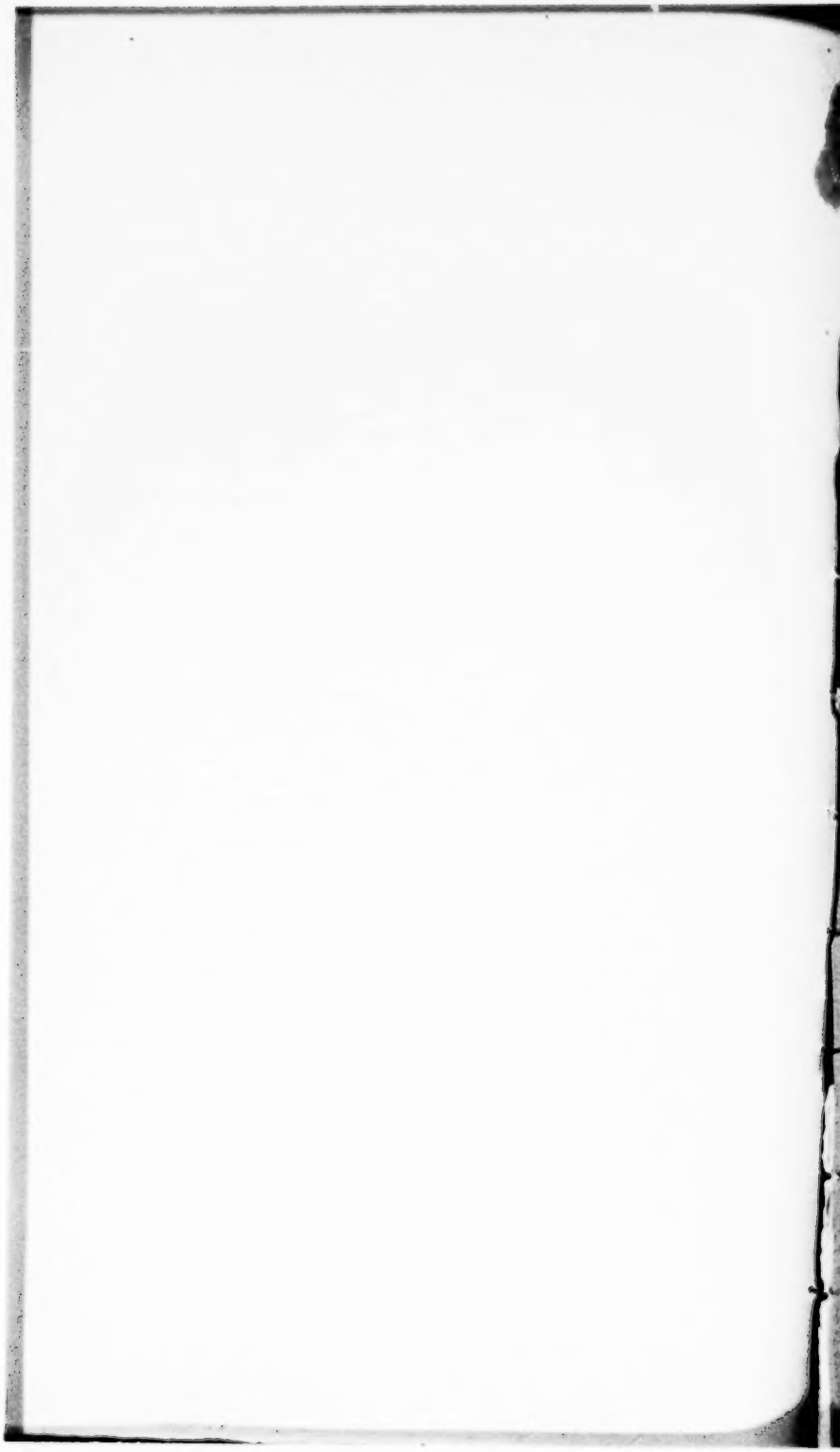
It is true today as in the past, that it is the duty of this Court, whenever a question as to police power comes before it, to look into the substance of things, whatever the legislative declaration, and to declare the law unconstitutional when not bottomed on actual considerations of public health, morals or safety. There may be here "a disposition to favor the validity of the law"; it may be that this Court "reluctantly disagrees with the local legislative authority." This is only a rule as to burden of proof. Whenever and however the fact appears that there are no considerations as to public health, safety or morals justifying the enactment, this Court will declare it unconstitutional.

Whichever way the decision may have gone in any particular case, we believe all authorities are in accord with the doctrines just laid down.

In this case, we have affirmatively shown that no conditions exist warranting the enactment of the challenged regulations of billboards as exercise of the police power. We respectfully submit that the judgment of the Supreme Court of Missouri should be reversed.

MARION C. EARLY,

Attorney for Plaintiff in Error.



No. [illegible]320

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

Supreme Court, U.S.
FILED
MAR 5 1920
JAMES D. MAHER,
CLERK

ST. LOUIS POSTER ADVERTISING COMPANY,
Plaintiff in Error,

vs.

THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES R. McKELVEY, Commissioner of Public Buildings, and WILLIAM YOUNG, Chief of Police,
Defendants in Error.

No. 24,165.
No. 25,055.

In Error to the Supreme Court of Missouri.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

MARION C. EARLY,
Attorney for Plaintiff in Error.

St. Louis Law Printing Co., Ninth and Walnut Sts. Bell, Main 1819.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

ST. LOUIS POSTER ADVERTISING COMPANY, *Plaintiff in Error.* vs. THE CITY OF ST. LOUIS, HENRY W. KIEL, Mayor; JAMES N. McKELVEY, Commissioner of Public Buildings, and WILLIAM YOUNG, Chief of Police, *Defendants in Error.*	No. 24,165. No. 26,033.

In Error to the Supreme Court of Missouri.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

In this case, carefully prepared to present a constitutional question and brought up for that purpose from the trial court through the Supreme Court of Missouri, we find for the first time in the history of

the case, in respondents' brief, filed in this Court, a claim that the petition fails to set forth the facts essential to present the views of the appellant.

It is the gist of plaintiff's contention that the case here presented differs *toto coelo* in its facts from the Gunning case, 235 Mo. 99, which passed on the same ordinances here involved.

Respondents would create the impression, if they do not directly assert, that this case does not differ in its facts from the Gunning case. The precise language of their brief is (page 8):

> "Eliminating, therefore, the conclusions of law, the exhibits and the evidence set forth in plaintiff's petition, in the form of affidavits or otherwise, and considering only the facts well pleaded in plaintiff's petition, we find that its petition is simply an attack upon the validity of the same ordinances whose validity was passed upon in the case of St. Louis Gunning Advertising Company v. City of St. Louis *et al.*"

From that point in the brief the identity of the two cases is assumed.

Since the petition was drawn expressly to negative the facts, on which the Gunning decision rested, respondents must eliminate from consideration the elaborate statements of the petition marking the discrimination between the cases.

On this point we find on page 6 of respondents' brief the following:

"The plaintiff in its petition has set out affidavits, has attached to its petition a number of exhibits, has pleaded other matters which are evidence and has also pleaded conclusions of law.

It is elementary, of course, that only facts well pleaded are to be considered in the determination of a demurrer. Evidence, affidavits in the nature of evidence, exhibits and conclusions of law are not to be considered."

Authorities are quoted, which we have no reason to criticise; but, nowhere in this connection or elsewhere in the argument, is this "elementary" law applied to this petition. Specifically, it is nowhere pointed out what portions of the petition are to be ignored. It is not easy to deal with such vague, shadowy charges. Kipling tells us how Mulvany dislocated his shoulder when he struck at Brady's ghost. In the above quotation from respondents' brief, there are, however, points of more or less condensation.

1. First, conclusions of law are not admitted by the demurrer. Does this apply to paragraph VIII of the petition (page 14 of the transcript of the record), wherein plaintiff avers that the ordinances are void as being in conflict with provisions of the Federal and State Constitutions? As to these allegations, which were essential for directing the Court's attention to the grounds of attack on the ordinance, we unreservedly admit that the demurrer does not confess them. Need we add that it never had occurred to us

that they did. We know of no other pleaded conclusions of law to which apellant's strictures can apply.

2. It is also true that exhibits not embodied in the petition, though filed with it, are not taken into consideration on demurrer. In this case the exhibits consist of photographs of billboards in position and of architects' blue prints of plans; nothing else. They are illustrative of definite allegations in the petition, and are no more part of it than the representations of Apollyon or Great Heart are part of Pilgrim's Progress.

3. Next, as to affidavits embodied in the petition, being those of Andrew J. O'Reilly, president of the Board of Public Improvements; James A. Smith and James M. Sullivan, Commissioners of Public Buildings; H. W. Powers, City Superintendent of Designs and Buildings, and Ernest J. Russell, architect. It is plaintiff's view that by incorporating these affidavits into the petition it had made the statements therein its own, and thus made them part of the petition for the purposes of this demurrer. Nor do we find anything in the cases cited by appellants inconsistent with this view. But a discussion of this matter of pleading is superfluous, since all statements in these affidavits are mere repetitions of what plaintiff elsewhere directly asserts in the petition. The affidavits simply give expert and official sanction to the statements elsewhere made. They follow the

allegation "that skillful engineers, architects and builders who have examined said bill boards and signs and the plans and specifications in accordance with which said bill boards and signs have been constructed and maintained declare the same to be safe, secure and sanitary". All conclusions of the affiants are independently alleged in the petition.

4. If the petition pleads evidence, save possibly as to the matter of the last paragraph, we are not aware of it. Respondents nowhere point to a word to which such criticism is applicable. On the contrary, all the facts on which plaintiff relies are given as direct allegations of the pleader. The petition sets forth that all plaintiff's bill boards are constructed upon a set of specifications embodied in the petition; that these boards are as safe as any other structures (not only in the opinion of experts but), in fact, being capable, as is directly alleged, of bearing the pressure of a wind at eighty-three miles per hour. The material of which they are made and the fireproof facings are directly set forth. It is stated as a fact that no fires have originated in said bill boards. All the details going to show that under the existing course of the advertising business the proposed reduction in size of bill boards would be highly detrimental to the plaintiff's business are pleaded as so many facts. In contrast with the assumption in the **Gunning** case, in the Supreme Court of Mis-

souri, that the bill boards are erected under ephemeral licenses from the owners of the realty, it is directly stated in this petition that these structures are built on land which appellant holds under leases or permits running from three to five years. It would be imposing on the time of the Court to reiterate the allegations as to each point.

As against respondents' vague criticism, we refer to the petition itself, which is abstracted in our "Statement", submitting that it contains, by direct allegation, all the facts we have relied on in argument as distinguishing this case from the **Gunniag** case.

II.

We have felt called on to file a reply to respondents' unformulated and unsupported claim that this petition merely presents the **Gunning** case over again, whereas appellant's leading thought throughout the litigation has been that under the facts presented by this petition, the ordinance should be held unconstitutional, even under the principles laid down in that **Gunning** case.

As to the rest of respondents' brief, we call attention to the fact that on every page (which isn't in quotation marks), it reiterates the identity of this case with the Gunning case, and declines to say a word further on the merits of **this** case. If this case

were the Gunning case over again, it would seem to merit something to be said in support of its conclusions on questions under the Federal Constitution when brought up before the Supreme Court of the United States. But as this case is very different in its facts, we are in the position of having no answer from respondents to the argument we have made with earnestness and a conviction of its soundness.

Respectfully submitted,

MARION C. EARLY.

Attorney for Plaintiff in Error.

ST. LOUIS POSTER ADVERTISING COMPANY *v.* CITY OF ST. LOUIS ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

ST. LOUIS POSTER ADVERTISING COMPANY *v.* CITY OF ST. LOUIS ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Nos. 220 and 2. Argued March 12, 13, 1919.—Decided March 24, 1919.

A city ordinance allowing no billboard of 25 square feet or more to be put up without a permit, and none to extend more than 14 feet high above ground; requiring an open space of 4 feet between the lower edge and the ground; forbidding an approach of nearer than 6 feet to any building or to the side of any lot than 2 feet to any other

billboard or 15 feet to the street; requiring conformity to the building line; limiting billboards in area to 500 square feet; and exacting a permit-fee of one dollar for every 5 lineal feet; *held* within the police power. P. 274. *Cusack Co.* v. *Chicago*, 242 U. S. 526.

Making billboards safe against wind and fire may not exempt them from the power of restriction or prohibition. *Id.*

Such regulations may not improperly include incidental and relatively trifling requirements founded in part at least on asthetic reasons, such as a requirement of conformity to a building line. *Id.*

A high tax imposed by a city on billboards for the purpose of discouraging them is not objectionable under the Constitution. *Id.*

It is not an answer to an ordinance regulating the size, etc., of billboards, that they are on land leased or belonging to their owner, or that their owner has contracted ahead to maintain advertisements upon them, or that the size of board allowed is too small for standard posters and that these cannot be changed without affecting the business disastrously. *Id.*

195 S. W. Rep. 717, affirmed.

THE cases are stated in the opinion.

Mr. Marion C. Early, for plaintiff in error and appellant, contended that this case differed, *toto cælo*, from the *Gunning Case*, 235 Missouri, 99, upon which great reliance was placed by the city. In that case, though involving the same ordinances, the cornerstone of the decision was the finding that the billboards there under consideration were dangerous to public safety and injurious to public health and morals, and, because of that finding, the regulations were upheld as proper exercise of the police power. In this case, *per contra*, the allegations of the bill, framed with elaboration for the very purpose of avoiding that decision, and confessed by the demurrer, did away with the possibility of any such finding, showing conclusively that the billboards here in question are not dangerous to health, safety or morals, on any theory. Also, the case of *Cusack Co.* v. *Chicago*, 242 U. S. 526, while laying stress upon the presumptions in favor of local action, concedes expressly the duty of this court to interfere when

that action, plainly and palpably, "has no real or substantial relation to the public health, safety, morals, or to the general welfare." *Mugler* v. *Kansas*, 123 U. S. 661; *Minnesota* v. *Barber*, 136 U. S. 313; *People* v. *Weiner*, 271 Illinois, 74; *Lawton* v. *Steele*, 152 U. S. 133. Surely the presumption cannot be made conclusive without destroying all protection under the Fourteenth Amendment against local legislation asserting itself to be an exercise of the police power. This court has declared itself in duty bound to investigate whether the facts justifying such exercise actually exist.

There is nothing to justify the requirement that boards shall be 15 feet from the street line. This could only have relation to the danger of their being blown down, which is absent in this case. So of the regulation as to height; it has no possible relation to health or morals, but only to safety, and that danger is here eliminated. The fact that such boards in some cases may be carelessly constructed will not warrant their absolute prohibition, but only regulations to insure their safety. *Passaic* v. *Patterson Bill Posting Co.*, 72 N. J. L. 285; *State* v. *Lamb*, 98 Atl. Rep. 459; *State* v. *Whitlock*, 149 N. Car. 542; *Crawford* v. *Topeka*, 51 Kansas, 756; *People* v. *Weiner*, 271 Illinois, 74; *Chicago* v. *Gunning System*, 214 Illinois, 628.

The restrictions as to nearness of approach to buildings and the space between billboards can only be referred to danger from fire—not present here; and, as regards the public health and morality, these boards are so constructed and maintained as not to constitute a nuisance in law or in fact.

The regulations requiring conformity to the building line can rest only on æsthetic considerations, and they do not warrant exercise of the police power. *St. Louis Gunning Co.* v. *St. Louis*, 235 Missouri, 99; *Lawton* v. *Steele*, 152 U. S. 133; *Fisher* v. *Woods*, 187 N. Y. 90; *Austin* v. *Murray*, 16 Pick. 126; *People* v. *Murphy*, 195 N. Y. 126.

The cost of building-permits, in the case of billboards, is several hundred times what is required for other structures. This discrimination, apparent on the face of the ordinance, must be condemned as unconstitutional. The whole ordinance, so far as it deals with billboards, is based on no public policy, but on hostility to a legitimate business. *St. Louis Gunning Co.* v. *St. Louis*, 235 Missouri, (dissent) 208; *State* v. *Layton*, 160 Missouri, 474.

Counsel cited and analyzed the following cases, in which billboard regulations were held void. *Haller Sign Works* v. *Training School*, 249 Illinois, 436; *Commonwealth* v. *Boston Advertising Co.*, 188 Massachusetts, 438; *People* v. *Green*, 85 App. Div. 400; *Varney* v. *Williams*, 155 California, 318; *Bryant* v. *Chester*, 212 Pa. St. 259; *Chicago* v. *Gunning System*, 214 Illinois, 628; *Curran Bill Posting Co.* v. *Denver*, 47 Colorado, 221; *Crawford* v. *Topeka*, 51 Kansas, 756; *Passaic* v. *Patterson Bill Posting Co.*, 72 N. J. L. 285; *State* v. *Whitlock*, 149 N. Car. 542.

Mr. Everett Paul Griffin, with whom *Mr. Charles H. Daues* was on the brief, for defendants in error and appellees.

Mr. Justice Holmes delivered the opinion of the court.

The first mentioned of these cases was brought by the plaintiff in error in a State Court of Missouri to prevent the City of St. Louis and its officials from enforcing an ordinance regulating the erection of billboards, on the ground that the ordinance is contrary to the Fourteenth Amendment in various respects. The suit was begun on March 21, 1914, and on May 22, 1917, a judgment of that Court dismissing it upon demurrer was affirmed by the Supreme Court of the State. 195 S. W. Rep. 717.

The other case was begun a little earlier, on January 30, 1914, in the District Court of the United States, by a bill in equity substantially to the same effect as in the state case. The bill was dismissed upon motion on February 19, 1914. The two cases appear to have proceeded to a conclusion without any reference to each other, but as they involve the same parties and the same questions they have been argued as one case here.

The ordinance complained of is number 22,022, passed on April 7, 1905. It allows no billboard of twenty-five square feet or more to be put up without a permit and none to extend more than fourteen feet high above the ground. It requires an open space of four feet to be left between the lower edge and the ground, forbids an approach of nearer than six feet to any building or to the side of the lot, or nearer than two feet to any other billboard, or than fifteen feet to the street line, and with qualifications requires conformity to the building line. No billboard is to exceed five hundred square feet in area. The fee for a permit is one dollar for every five lineal feet. The bill states that the size of posters has been standardized and cannot be changed without great expense and that the limits in size fixed for the boards are too small for such posters and will affect the plaintiff's business disastrously. The billboards are all upon private ground owned by or let to the plaintiff. They are built to withstand a windstorm of eighty-three miles an hour, a greater velocity than any known in St. Louis, and the frames and facing are of galvanized iron so as to exclude all danger of fire. The plaintiff has contracts running from six months to three years binding it to maintain advertisements upon its boards. The defendants are proposing to tear down these boards unless the plaintiff complies with the ordinance. This is a greatly abbreviated statement of the case but is sufficient, we believe, to present the questions that we have to decide.

Of course, the several restrictions that have been mentioned are said to be unreasonable and unconstitutional limitations of the liberty of the individual and of rights of property in land. But the argument comes too late. This Court has recognized the correctness of the decision in *St. Louis Gunning Advertising Co.* v. *St. Louis*, 235 Missouri, 99, followed in this case, that billboards properly may be put in a class by themselves and prohibited "in residence districts of a city in the interest of the safety, morality, health and decency of the community." *Cusack Co.* v. *Chicago*, 242 U. S. 526, 529, 530. It is true that according to the bill the plaintiff has done away with dangers from fire and wind, but apart from the question whether those dangers do not remain sufficient to justify the general rule, they are or may be the least of the objections adverted to in the cases. 235 Missouri, 99. *Kansas City Gunning Advertising Co.* v. *Kansas City*, 240 Missouri, 659, 671. Possibly one or two details, especially the requirement of conformity to the building line, have æsthetic considerations in view more obviously than anything else. But as the main burdens imposed stand on other ground, we should not be prepared to deny the validity of relatively trifling requirements that did not look solely to the satisfaction of rudimentary wants that alone we generally recognize as necessary. *Hubbard* v. *Taunton*, 140 Massachusetts, 467, 468.

If the city desired to discourage billboards by a high tax we know of nothing to hinder, even apart from the right to prohibit them altogether asserted in the *Cusack Co. Case*. *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 329. As to the plaintiff's contracts, so far as appears they were made after the ordinance was passed, but if made before it they were subject to legislation not invalid otherwise than for its incidental effect upon them. *Atlantic Coast Line R. R. Co.* v. *Goldsboro*, 232 U. S. 548, 558. The same thing may be said, apart from other an-

swers, with regard to the alleged standardizing of the size of posters. In view of our recent decision we think further argument unnecessary to show that the ordinance must be upheld.

Judgment in No. 220 and decree in No. 2 affirmed.